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FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. October 8, 2013

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on October 1, 2013

AWARDS AND PROCLAMATIONS

Proclamations:

Friends of the Public Library
Disability Mentoring Day
Wichita Black Nurses Association Day

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Mark Geitzen - Request for police protection at the Southwind Abortion facility.
2. Jan Harrison - Proposal to rename the Wichita Mid-Continent Airport in honor of Dwight D. Eisenhower.

II. CONSENT AGENDA (ITEMS 1 THROUGH 18)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see “**ATTACHMENT 1 – CONSENT AGENDA ITEMS**” for a listing of all Consent Agenda Items.)*

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Drought Plan.
(Deferred October 1, 2013)

RECOMMENDED ACTION: Approve the drought plan and place the ordinance on first reading.

IV. NEW COUNCIL BUSINESS

1. Public Hearing for West Bank Apartments TIF Project Plan. (District VI)

RECOMMENDED ACTION: 1) close the public hearing; 2) approve first reading of the ordinance adopting the West Bank Apartments TIF Project Plan; 3) approve first reading of the home rule ordinance authorizing the execution of the Development Agreement and authorizing issuance of bonds for the TIF-funded improvements; and 4) authorize the necessary signatures.

2. Approval of the Development Agreement for the Exchange Place Project. (District VI)

RECOMMENDED ACTION: Approve first reading of the home rule ordinance authorizing the execution of the Amended and Restated Development Agreement and authorizing bond issuance for the TIF funded improvements, and authorize the necessary signatures.

3. Approval of the Issuance of STAR Bonds for the K-96 Greenwich Star Bond Project. (District II)

RECOMMENDED ACTION: Approve first reading the STAR Bond Ordinance authorizing the issuance of not-to-exceed \$45,000,000 in STAR Bonds for the K-96 Greenwich STAR Bond Project, with final adoption of the Ordinance made subject to approval of any substantive changes to bond documents at second reading and approval of the terms of the bond issue by the Kansas Secretary of Commerce.

4. Improvements to Kellogg from Cypress to Wiedemann. (District II)

RECOMMENDED ACTION: Approve the budget, place the ordinance on first reading, and authorize the necessary signatures. State and Federal funding administered through the Kansas Department of Transportation will require standard agreements to be signed throughout the course of the project. In addition, design needs may require the acquisition and granting of easements, the signing of utility relocation agreements and compensation for the same, and the signing of required permits and compensation for the same.

(9:30 a.m. or soon thereafter)

5. Public Hearing: Repair or Removal of Dangerous and Unsafe Structures

Property Address

a. 1547 N Burns

Council District

VI

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the building a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structure. Any extensions of time granted to repair the structure would be contingent on the following: (1) All taxes have been paid to date, as of ; (2) the structure has been secured as of and will continue to be kept secured; and (3) the premises are mowed and free of debris as of , as will be so maintained during renovation.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel for Mayor Carl Brewer to attend the China Aviation Festival & Opening of Wichita/China Office in Beijing and Xi'an, China, October 15-21, 2013. Travel expenses will be covered by the Kansas Global Trade Services, Inc

RECOMMENDED ACTION: Approve the expenditures.

2. Approval of travel for Mayor Carl Brewer to attend the 2013 Governor's Conference on the Future of Water in KS in Manhattan, KS, October 25, 2013.

RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 18)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts

- a. Report of Board of Bids and Contracts dated October 7, 2013.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2013</u>	<u>(Consumption on Premises)</u>
Ruben Acosta	Rubens Mexican Grill**	915 West Douglas

**General/Restaurant (need 50% or more gross revenue from sale of food)

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.

- a. Community Events - Turkey Trot 10 Mile and 2 Mile Run. (District VI)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

5. Agreements/Contracts:

- a. Hold Harmless Agreement, Easement Encroachment. (District IV)
b. United States Geological Survey (USGS) Surface Water Agreement October 1, 2013 through September 30, 2014.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Change Orders:

- a. Change Order No. 1 for Improvements to L. W. Clapp Memorial Golf Course. (District III)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

7. Property Acquisition:

- a. Relocation of Outdoor Advertising Structure for the Improvement of the Kellogg Avenue, US Highway 54 from Cypress to Chateau. (District II)
- b. Partial Acquisition of 6601 West 21st Street North for the Amidon, 21st Street North to 29th Street North Improvement Project. (District VI)
- c. Acquisition of Outdoor Advertising Sign Leasehold and Relocation the Outdoor Advertising Sign at 511 South Webb for the Improvement of the Kellogg Avenue, US Highway 54) from Cypress to Chateau. (District II)

RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

8. Contracts and Agreements for September 2013.

RECOMMENDED ACTION: Receive and file.

9. Contract with WAMPO for Pass-through Federal Funds.

RECOMMENDED ACTION: Approve the contracts and authorize the Mayor to execute the agreement.

10. Second Reading Ordinances: (First Read October 1, 2013)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

11. *SUB2013-00017 -- Plat of Travel Air City 2nd Addition located on the east side of Webb Road, north of Central
(District II)

RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.

12. *DED2013-00026 Dedication of Drainage Easement located on the northeast corner of 37th Street North and Rock Road. (District II)

RECOMMENDED ACTION: Accept the Dedication.

13. *VAC2013-00008 - Request to vacate a portion of platted complete access control on property generally located on the northwest corner of 13th Street North and Webb Road. (District II)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

14. *VAC2013-00020 - Request to vacate a portion of a platted utility and drainage easement, on property generally located east of 151st Street West, south of Maple Street, on the northeast corner of Fawnwood and Hayden Streets. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

15. *VAC2013-00024 - Request to vacate a portion of platted complete access control on property generally located north of K-96 Highway on the east side of Oliver Avenue. (District I)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

16. *VAC2013-00025 - Request to vacate a portion of platted complete access control on property generally located north of 37th Street North on the east side of Rock Road. (District II)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

17. *VAC2013-00028 - Request to vacate a portion of a platted front yard setback on property generally located west of Meridian Avenue, south Pawnee Avenue, on the northeast side of Custer Avenue and Casado Street. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

18. *WAA Report of Board of Bids and Contracts dated October 7, 2013.

RECOMMENDED ACTION: Receive and file report; approve Contracts; authorize necessary signatures.

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Drought Plan

INITIATED BY: Department of Public Works & Utilities

AGENDA: Unfinished Business

Recommendation: Approve the plan and place the ordinance on first reading.

Background: The most recent drought began in early 2011 and ended with heavy rainfall in July and August. During that time, City staff presented options and data in numerous meetings with the City Council, District Advisory Boards, the Water Utilities Advisory Committee, and community groups. Developing a staged plan to respond to a future drought was a main theme from the input received.

On October 1, 2013, City staff presented a proposed drought plan and ordinance that included phased implementation of water reduction strategies over four stages. Each stage would be triggered automatically by lake levels at Cheney Reservoir, one of the City's two water supply sources.

City Council deferred the item in order for staff to develop exemptions for food producing gardens and clarify administration of private water well signage during periods of drought.

Analysis: Four drought stages are proposed. The actions included in each would be automatically triggered, based on a 12-month, smoothed average of the conservation pool level at Cheney Reservoir. The City Manager would be authorized to implement the approved actions.

- **Stage 1 – Voluntary Conservation:** Wichita would enter this early drought stage when the 12-month Cheney average moved below 90%. There would be no penalties or mandatory restrictions. However, the City would begin offering a rebate program to encourage conservation, while also engaging in a multi-faceted marketing campaign to raise drought awareness. A number of permanent conservation measures would continue for City of Wichita operations.
- **Stage 2 – Mandatory Restrictions:** Once the 12-month Cheney average was lower than 70%, Stage #2 would be triggered. Customers could then use water outdoors only one day a week, and hours would be restricted to the coolest part of the day (8pm – 10am). Violators would receive a warning, followed by penalties of \$50 - \$100. Food producing gardens utilizing drip irrigation or hand watering and businesses that generate economic activity directly from outdoor watering (golf courses, car washes, etc.) would be exempt. Most of the discretionary internal conservation measures would be enacted, though fountain schedules would remain unchanged.
- **Stage 3 – Irrigation Bans:** This severe drought stage would be triggered when Cheney's average level moves below 50%. All outdoor water usage would be prohibited except for food producing gardens utilizing drip irrigation or hand watering and watering by the businesses exempted during Stage #2. Their exemption would still apply during Stage #3. Violators would receive a warning after their first infraction, and penalties ranging from \$250 - \$500 thereafter. The City would expedite repairs to all water main breaks and irrigation leaks and would reduce the operating hours at its public fountains.

- **Stage 4 – Water Emergency:** The final drought stage would be in effect after the Cheney average drops below 35%, necessitating an emergency climate for the water utility. No outdoor watering would be allowed, even from businesses that were formerly exempt from the drought bans. In addition, all customers would be required to decrease their indoor usage (base demand) by 15%. Major hospitals would be exempt from this base demand reduction, due to the critical life-saving operations they offer. Penalties would range from a warning to a \$500 penalty, while a flow restrictor would be installed on water meters of customers who violate the policy three times. All of the City-owned fountains would be shut off.

Financial Considerations: There is no current cost to adopting this plan. Should the region enter into a long-term drought that pushes into stages three or four, the utility would likely lose significant revenue. A precise amount is unknown, as it is dependent on how much water usage would be reduced, along with the rates that would be in place in the future.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendations/Actions: It is recommended that the City Council approve the drought plan and place the ordinance on first reading.

Attachments: Drought Plan and revised ordinance.

2013

DROUGHT RESPONSE

STAGES & ACTION STEPS

CITY OF WICHITA

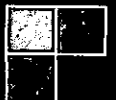


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How Drought Stages are Defined

The City of Wichita will use a 12-month average of the conservation pool level in Cheney Reservoir in order to determine the establishment and severity of a drought. The US Army Corps of Engineers provides hourly data on how full the conservation pool is. Cheney Reservoir is one of the City's two water sources and is the most susceptible to drought conditions. The 12-month average will smooth out seasonal variations to ensure that low points experienced in normal years do not move the City of Wichita into a drought response.

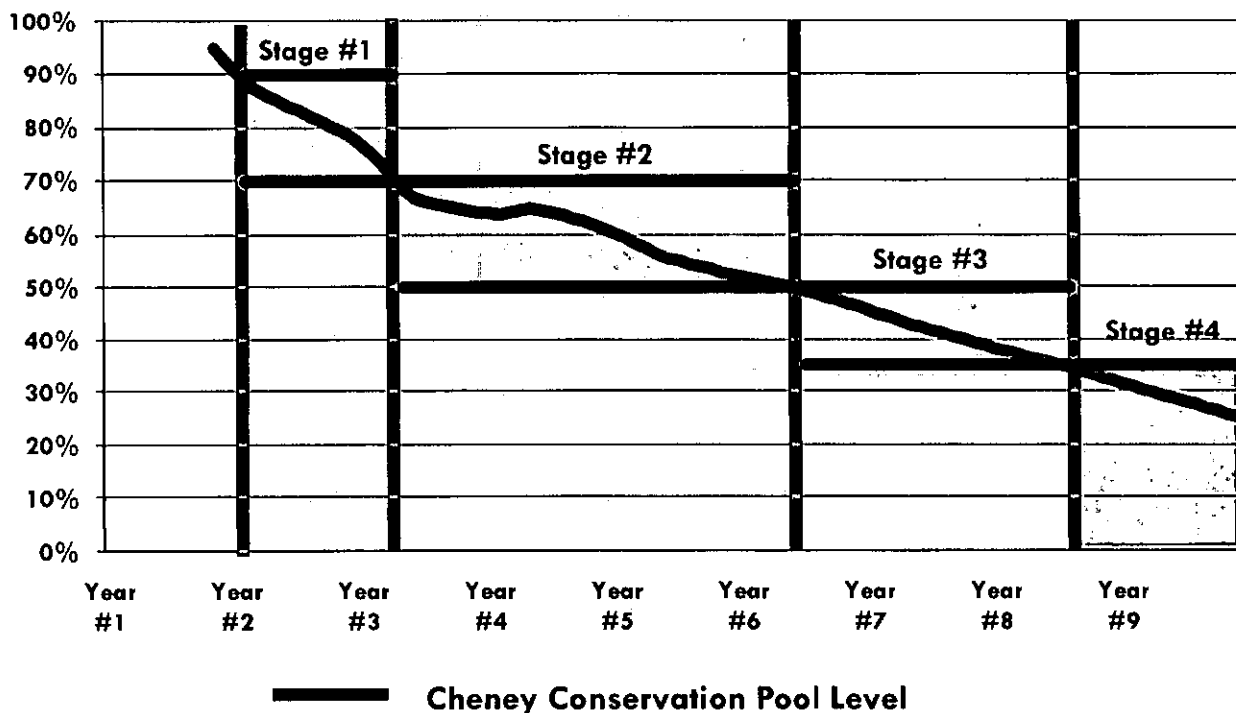
Trigger Points for Each Stage

Four stages of progressive measures will be instituted during a long-term drought in Wichita. The lake level triggers for each stage are included in the accompanying chart and table.

CHENEY CONSERVATION POOL: 12-MONTH AVERAGE		
	Top Level	Bottom Level
Normal Conditions	100%	90%
Stage #1	89%	70%
Stage #2	69%	50%
Stage #3	49%	35%
Stage #4	34%	0%

Wichita will need to experience a multi-year drought to enter any of these stages. Should the area experience a drought similar to the 2011-2012 conditions, there would be a full year before an enhanced drought response would be initiated. The City of Wichita would then progress through different stages until the drought ends.

Drought Stage Triggers



Monitoring Cheney Lake Levels

The Department of Public Works & Utilities is responsible for managing the City of Wichita water supply. This includes monitoring the lake levels at Cheney Reservoir. Public Works & Utilities staff will regularly review the data published by the US Army Corps of Engineers and will keep a 12-month average level of water in the conservation pool.

When the Wichita area enters a drought, the 12-month average lake level will begin to decline from its normal level. Public Works & Utilities will chart the level of the conservation pool and provide updates to the City Manager in the first year of a drought, before the first drought stage is effective.

Entering More Severe Drought Stages

This drought plan, the triggering mechanisms for each stage, and the progressive water reduction actions were approved by the Wichita City Council in 2013. Therefore, this is the official policy plan for the community when Wichita is confronted with the drought.

As these actions have already been approved by the Wichita City Council, the City Manager is responsible for carrying out this plan and providing all necessary written approvals for entering into each stage. No further action will be required by the City Council.

The Public Works & Utilities Department will provide regular updates to the level of the conservation pool at Cheney Reservoir. Should the 12-month average level reach the of the triggering point for Stage #1 or any of the further drought stages, the City Manager will provide written authorization prior to implementing the requisite actions.

Coming Out of a Drought

The same process will be used when lake levels at Cheney increase, making it necessary to declare drought stages that have ended. Staff from Public Works & Utilities will provide the City Manager with regular updates about the 12-month average level in the Cheney conservation pool.

Whenever that moving average raises above a drought stage threshold, the City Manager will provide written authorization to move the utility to the less-severe drought stage. Once the level increases above the Stage #1 threshold, the City Manager's written authorization will end all drought response actions.

It may be appropriate for the City of Wichita to move out of the drought much quicker than it can enter the drought—this would be caused by a rapid re-fill of Cheney Reservoir. Should an hourly reading at Cheney Reservoir show that the capacity level has increased above the maximum threshold for Stage #1 (90%), the City Manager will authorize an immediate end to all drought actions that are presently in effect.

DROUGHT RESPONSE

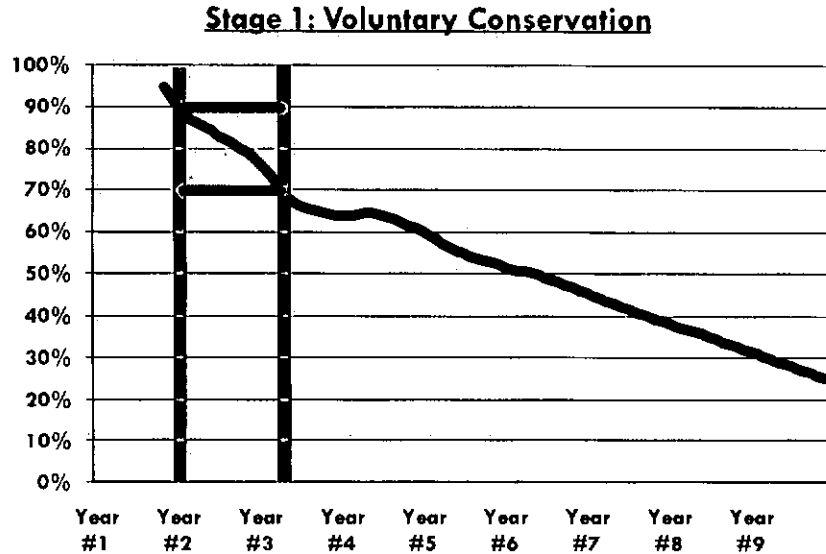
STAGE 1: VOLUNTARY CONSERVATION

Description

The beginning stage of drought response would likely occur after the first year of a drought and would last through a full irrigation season.

Voluntary water conservation is the focus of Stage #1. Utility customers will be encouraged to reduce water usage by participating in a rebate program that provide incentives for lower usage. The City of Wichita will culminate a high-profile marketing campaign to raise

drought awareness and publicize tips for conserving water. It will also continue to implement its permanent water conservation measures for its own operations.



— Cheney Conservation Pool Level

STAGE #1 ACTIONS

Utility Customers

- ◆ Respond to enhanced publicity efforts to raise drought awareness
- ◆ Conserve water voluntarily
- ◆ Take advantage of a rebate program to incentivize indoor and outdoor water conservation

City of Wichita—Internal Conservation

Continue permanent conservation measures:

- ◆ Use graywater from Herman Hill Park to water trees
- ◆ Realize water savings from motion sensors installed on splash pads and spray parks
- ◆ Follow landscape design guidelines for new municipal construction
- ◆ Decide whether drought-tolerant grasses or artificial turf is appropriate on existing fields
- ◆ Implement conservation protocol for taste and odor complaints
- ◆ Mow grass to a higher length to increase shade and reduce evaporative losses

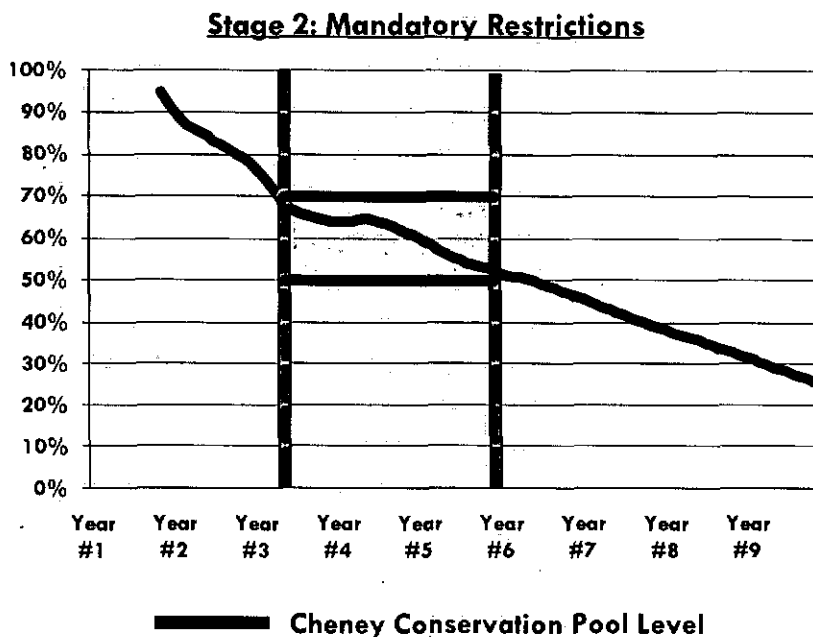
DROUGHT RESPONSE

STAGE 2: MANDATORY RESTRICTIONS

Description

Stage #2 brings the first mandatory restrictions during a drought and would be triggered when the 12-month average in Cheney's conservation pool reaches 69%.

Outdoor water usage would be restricted to one day per week, using the quadrant schedule included on the following page. The City of Wichita would initiate further conservation measures for its own operations.



PENALTY SCHEDULE PER VIOLATION

1 st Incident	Warning
2 nd Incident	\$50
3 rd Incident & Beyond	\$100

Exemptions

Food producing gardens utilizing drip irrigation or hand watering and businesses that generate their core economic activity from outdoor usage will be exempt. Such businesses include golf courses, car-washes, nurseries, sod companies, and others identified by the City Manager.

STAGE #2 ACTIONS

Utility Customers

- ◆ Continue all measures from Stage #1
- ◆ Follow mandatory restrictions on outdoor water usage
- ◆ Outdoor water usage prohibited from 10am until 8pm on all days. It is not allowed at all on Saturdays, Sundays, or Mondays
- ◆ Quadrant #1 can water on Tuesdays; Quadrant #2 can water on Wednesdays; Quadrant #3 can water on Thursdays, and Quadrant #4 can water on Fridays
- ◆ Violations will be enforced through the penalty schedule included above

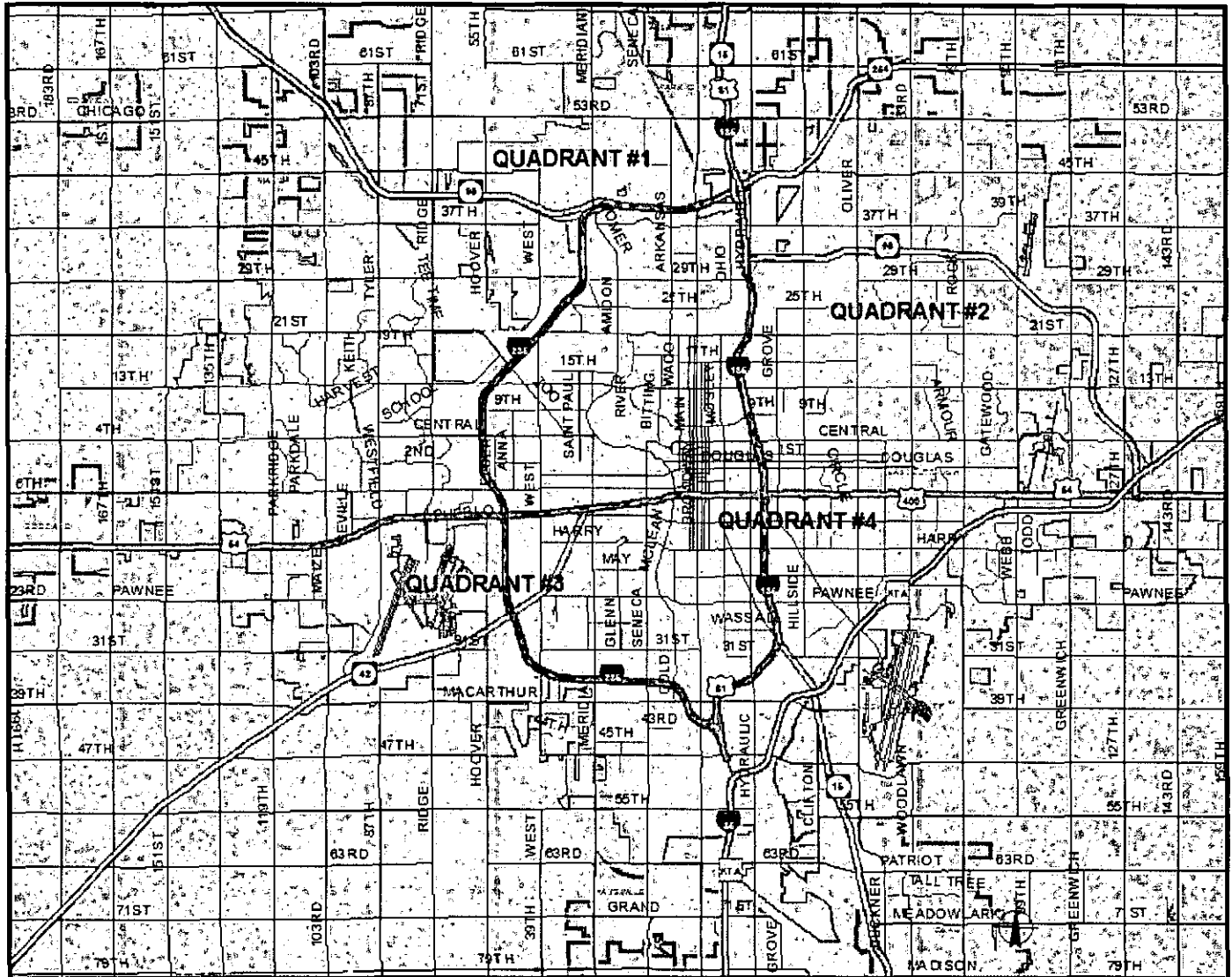
City of Wichita—Internal Conservation

- ◆ Continue all measures from Stage #1
- ◆ Follow all mandatory restrictions that are in place for water customers
- ◆ Replace Wichita Fire Department spray-downs with activities from the mobile prevention truck and utilize alternative hydrant maintenance schedule
- ◆ Switch water allocation to increase amount taken from the Equus Beds

DROUGHT RESPONSE

STAGE 2: MANDATORY RESTRICTIONS

The following map illustrates the quadrants that make up the City of Wichita watering grid during Stage #2 restrictions. The intersection of Central & Broadway is the dividing point for the quadrants. Each quadrant is allowed to use water outdoors on one day per week, according to the schedule provided below. In addition, no water may be used during the hottest part of the day, from 10am until 8pm.



WATERING DAYS & TIMES

Quadrant #1

Tuesdays

Quadrant #2

Wednesdays

Quadrant #3

Thursdays

Quadrant #4

Fridays

*Watering allowed from 8pm—10am

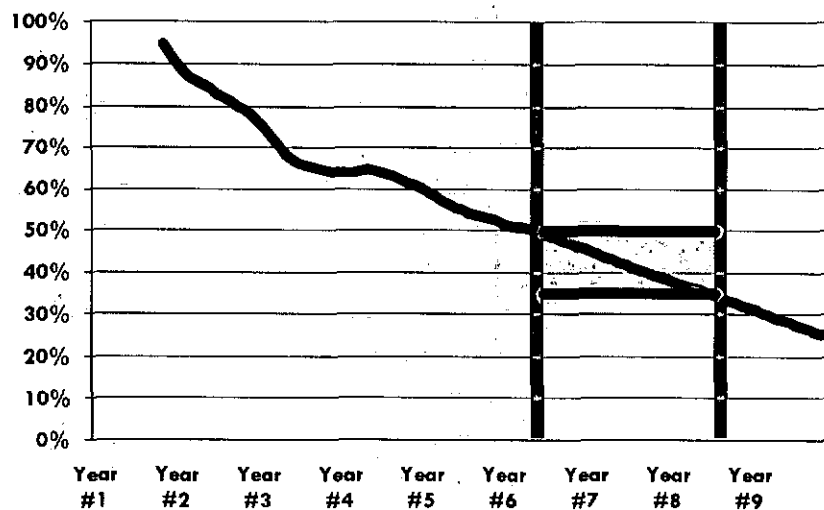
Description

Once Cheney's conservation pool drops below 50% with a 12-month average, Stage #3 will be in effect. This is the second to last drought stage and thus includes more severe actions.

All outdoor water usage will be banned. Customers who previously could use water one day per week in Stage #2 would be prohibited from using any water outdoors. The penalty for violations will increase dramatically, topping out at \$500

per incident, for repeated violations. The City of Wichita will expedite repairs on its water main breaks and irrigation leaks, to reduce water loss. Operational hours at public fountains will be reduced, while municipally owned grasses will not be irrigated, except for those that are exempt under this drought stage.

Stage 3: Irrigation Bans



Cheney Conservation Pool Level

PENALTY SCHEDULE PER VIOLATION

1 st Incident	Warning
2 nd Incident	\$250
3 rd Incident & Beyond	\$500

Exemptions

The same exemptions that are in effect in Stage #2 will apply to this stage. That includes food producing gardens utilizing drip irrigation or hand watering and all businesses that rely directly on outdoor water usage to generate their core economic activity.

STAGE #3 ACTIONS

Utility Customers	City of Wichita—Internal Conservation
<ul style="list-style-type: none"> Continue all measures from Stage #1 All outdoor watering is banned Exemptions provided for businesses generating economic activity directly from outdoor irrigation 	<ul style="list-style-type: none"> Continue all measures from Stages #1-2 Reduce hours at City-owned fountains Eliminate Irrigation on City-owned grasses that are not exempted due to the economic activity they create Expedite repair on water main breaks and irrigation leaks

DROUGHT RESPONSE

STAGE 4: WATER EMERGENCY

Description

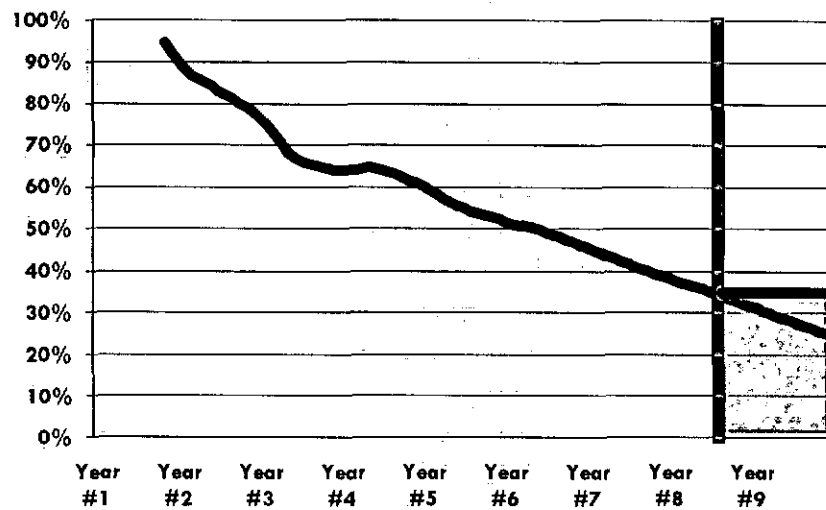
Triggered when the 12-month average level at Cheney is below 35%, the final drought stage would likely be reached after a prolonged and severe drought. The most restrictive water usage regulations would be applied, in order to preserve the remaining water at Cheney Reservoir.

All outdoor water usage would be banned, even from those businesses previously exempted. Customers would have to reduce base demand by 15%, meaning that their usage would need to be 15% lower than their Average Winter Consumption at the beginning of Stage #4. Repeated violations would result in a flow restrictor to ensure compliance with the regulations.

Major hospitals would not need to reduce base demand. These include Wesley and Via Christi hospital campuses, the Kansas Medical Center, the VA Hospital, the Kansas Spine Hospital, the Kansas Surgery & Recovery, and Select Specialty Hospital.

PENALTY SCHEDULE PER VIOLATION	
1 st Incident/Month	Warning
2 nd Incident/Month	\$250
3 rd Incident/Month & Beyond	\$500 + Flow Restrictor

Stage 4: Water Emergency



Cheney Conservation Pool Level

STAGE #4 ACTIONS

Utility Customers

- Continue all measures from Stage #1
- All outdoor water usage is banned, without exemptions
- Water usage must be 15% below the Average Winter Consumption (AWC), at the beginning of drought Stage #4
- Major hospitals are exempt from the 15% water usage AWC reduction

City of Wichita—Internal Conservation

- Continue all measures from Stages #1-3
- Shutdown all City-owned fountains

ORDINANCE NO. XX-XXX

AN ORDINANCE AMENDING CHAPTER 17.14 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DROUGHT RESPONSE ACTIONS AND REPEALING THE PRIOR VERSION OF SAID CHAPTER.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Chapter 17.14, of the Code of the City of Wichita is hereby amended to read as follows:

Sec. 17.14.010. Purpose.

The purpose of this chapter is to provide for the actions in response to drought conditions and include the declaration of four stages of drought response. It also provides for the implementation of the drought response plan and voluntary and mandatory water conservation measures throughout the city in the event such a drought stage is declared.

Sec. 17.14.020. Definitions.

- (a) "Customer," as the term is used in this chapter means the customer of record using water for any purpose from the city's water distribution system and for which a regular charge is made.
- (b) "Drought response plan" shall be the city's drought action plan, as may be supplemented or amended from time to time, on file with the city clerk.
- (c) "Outdoor water," as the term is used in this chapter includes, but is not limited to: any water used through an irrigation system, an outdoor hose, or hand watering container outside of a physical structure.
- (d) "Water," as the term is used in this chapter, means water available to the city for treatment by virtue of its water rights or any treated water introduced by the city into its water distribution system.
- (e) The following stages of drought response are established:

Stage 1: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 70% and 89%.

Stage 2: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 50% and 69%.

Stage 3: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 35% and 50%.

Stage 4: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 0% and 34%.

(f) For purposes of determining drought response stages, the term "conservation pool level" means the percentage of the conservation pool that is filled

Sec. 17.14.030. Declaration of drought stages.

The 12-month average of the conservation pool level in Cheney Reservoir is the basis for establishing drought stages, according to the levels provided in Section 17.14.020. The public works & utilities director shall monitor the lake level in Cheney Reservoir. When the 12-month moving average of Cheney's conservation pool level indicates the existence of a drought response stage in accordance with Section 17.14.020, the city manager will issue a public declaration of such drought response stage. Should the lake level at Cheney Reservoir subsequently exceed the maximum threshold of Stage 1 as provided in Section 17.14.020, the city manager shall issue a public declaration that previously declared drought response measures are terminated.

Sec. 17.14.040. Stage 1 measures.

Upon the declaration of a Stage 1 drought response stage as provided in Section 17.14.030, the city manager will call on all water consumers to employ voluntary water conservation measures to limit or eliminate water use. The city shall offer incentives or rebates to encourage indoor and outdoor water conservation. The city shall implement conservation measures in its own operations, in accordance with the drought response plan.

Sec. 17.14.050. Stage 2 measures:

Upon the declaration of a Stage 2 drought response stage as provided in Section 17.14.030, the city manager will implement the mandatory water conservation measures set forth below. Food producing gardens utilizing drip irrigation or hand watering shall be Stage 2 exempt. Businesses that generate their core economic activity from usage of outdoor water shall be Stage 2 exempt. Such businesses include, but are not limited to, golf courses, car washes, nurseries, sod suppliers, and others identified by the city manager. The city shall implement water conservation measures in its own operations, including measures in the drought response plan and shifting some of the water allocation from Cheney Reservoir to other sources. Mandatory water conservation measures include the following and noncompliance by customers who are not Stage 2 exempt shall be subject to the penalties provided in Section 17.040.100:

(a) Restricting outdoor water usage to one day per week, in accordance with (b), below;

(b) Customers at real properties northwest of the Central & Broadway intersection may use outdoor water on Mondays; customers at real properties northeast of Central & Broadway may use outdoor water on Tuesdays; customers at real properties southwest of Central & Broadway may use outdoor water on Wednesdays; customers at real properties southeast of Central & Broadway may use outdoor water on Thursdays; no outdoor water can be used on Fridays, Saturdays, or Sundays by customers who are not Stage 2 exempt;

- (c) Prohibiting all customers who are not Stage 2 exempt from using outdoor water from 10:00am until 8:00pm.

Sec. 17.14.060. Stage 3 measures.

Upon the declaration of a Stage 3 drought response stage as provided in Section 17.14.030, the city manager will prohibit all usage of outdoor water by customers who are not Stage 3 exempt. Food producing gardens utilizing drip irrigation or hand watering shall be Stage 3 exempt. Businesses that generate their core economic activity from usage of outdoor water shall be Stage 3 exempt. Such business include, but are not limited to, golf courses, car washes, nurseries, sod suppliers, and others identified by the city manager. The city shall implement water conservation measures in its own operations, in accordance with the drought response plan. Any use of outdoor water outdoors by customers who are not Stage 3 exempt shall be subject to the penalties provided in Section 17.040.100.

Sec. 17.14.070. Stage 4 measures.

Upon the declaration of a Stage 4 drought response stage as provided in Section 17.14.030, the city manager will implement mandatory water conservation measures for all customers, including prohibition of usage of outdoor water. No exemptions shall be provided from the prohibition on usage of outdoor water. The city shall implement all possible water conservation measures in its own operations. All customers, except those specifically exempted below, are required to reduce their water usage by 15% from their Average Winter Consumption, as defined in Section 17.12.090, as it was most recently calculated as of the declaration of the Stage 4 drought response stage. Any noncompliance with the provisions of this section shall be subject to the penalties provided in Section 17.040.100. The following customers are exempt from the requirement to reduce water usage by 15% from their Average Winter Consumption.

- (a) Wesley Medical Center
- (b) Galichia Heart Hospital
- (c) Wesley West Hospital
- (d) Via Christi Hospital – St. Francis
- (e) Via Christi Hospital – St. Joseph
- (f) Via Christi Hospital – St. Teresa
- (g) Via Christi Rehabilitation Hospital
- (h) Kansas Medical Center
- (i) Robert J. Dole VA Medical Center
- (j) Kansas Spine Hospital
- (k) Select Specialty Hospital

Sec. 17.14.080. Regulations.

During the effective period of any drought response stage as provided for in Section 17.14.030, the city manager is empowered to promulgate such regulations consistent with the provisions of this chapter as may be necessary to carry out and enforce the restrictions and penalties in effect for that drought response stage.

Sec. 17.14.090. Enforcement.

Whenever a drought response stage is declared to exist as set forth in this chapter, in addition to all law enforcement officers, the following personnel employed by the city shall have the power to enforce the provisions of this chapter:

- (a) Commissioned officers of the Wichita fire department;
- (b) Parking control checkers;
- (c) Traffic service officers;
- (d) All deputies under the supervision of the director of the metropolitan area building and construction department;
- (e) Any employee of the Public Works & Utilities department as designated by the director.

Such personnel shall have the power of a law enforcement officer for the purpose of signing a complaint and serving such complaint and a notice to appear upon any person where there is probable cause to believe such person has or is violating a section of this chapter.

Sec. 17.14.100. Violations, disconnections and penalties.

- (a) Upon violation of any water use restrictions imposed pursuant to Sections 17.14.050, Section 17.14.060, or 17.14.070 of this chapter, written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to city enforcement personnel who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the city manager or the city manager's designee determines is reasonable under the circumstances. If the order is not complied with, the city manager or the city manager's designee may assess an administrative fee or restrict water service to the customer in accordance with the standards in subsection (b), below, subject to the following procedures:
 - (1) The city shall give the customer notice by mail or actual notice that an administrative fee will be assessed or water service will be restricted within a specified time due to the violation and that the customer will have the opportunity to appeal the administrative fee or restriction by requesting a hearing scheduled before the city manager or a person designated as a hearing officer by the city manager;
 - (2) If such a hearing is requested by the customer charged with the violation by the specified date, he or she shall be given a full opportunity to be heard before the fee is assessed or the restriction or termination is ordered;
 - (3) The city manager or hearing officer shall make findings of fact and order whether a fee should be assessed or service should continue or be restricted;
 - (4) In the event no hearing is requested by the specified date, full water service shall be reinstated when the city is no longer in a Stage 4 drought response stage, as provided in Section 17.14.100(e) and all administrative fees have been paid.
- (b) Upon the first violation of any water use restrictions imposed pursuant to Section 17.14.050 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$50. Subsequent violations will be punishable with an administrative fee of \$100 per violation.
- (c) Upon the first violation of any water use restrictions imposed pursuant to Section 17.14.060 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation.
- (d) Upon the first violation of the outdoor water prohibition imposed pursuant to Section 17.14.070 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee

of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation and installation of a water flow restrictor. The flow restrictor will decrease the amount of water flowing through the meter to a customer and will not be removed until the city is no longer in a Stage 4 drought response stage.

- (e) Upon the first violation of the required 15% reduction imposed pursuant to Section 17.14.070 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation and installation of a water flow restrictor. The flow restrictor will decrease the amount of water flowing through the meter to a customer and will not be removed until the city is no longer in a Stage 4 drought response stage.
- (f) All administrative fees shall be subject to the same terms of payment that are set forth in Section 17.12.100 for regularly scheduled water meter charges, following the completion of the procedures in subsection (a), above.
- (g) In addition to disconnection/reconnection fees provided by Section 17.12.090, a fee of two hundred dollars shall be paid for the reconnection of any water service restricted pursuant to this chapter.

Sec. 17.14.110. Emergency restriction and termination.

- (a) Nothing in this chapter shall limit the ability of any properly authorized city official from restricting or terminating the supply of water to any or all customers upon the determination of such city official that emergency restriction or termination of water service is required to protect the health and safety of the public.

Sec. 17.14.120. Notification required with sprinkler systems.

Installers of lawn watering irrigation or sprinkling water systems, upon installing a lawn watering irrigation or sprinkling system, shall provide a copy of this chapter to the owner of the lawn watering irrigation or sprinkling system.

Sec. 17.14.130. Exemptions—Watering from wells—Sign required.

- (a) Persons using water from a well for any class of use as defined in this chapter shall be exempt from the penalties of this chapter, pursuant to Section 17.14.130(b).
- (b) To qualify for the exemption, persons using water from a well as set forth in subsection (a) shall, while engaged in such use(s), display a sign with the words "well water" upon it in a location that is readily visible to the general public.

Sec. 17.14.140. Severability.

If any provision of this chapter is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and its applicability to other persons and circumstances shall not be affected thereby.

Sec. 17.14.140A. Mandatory lawn watering rotation schedule.

- (a) In addition to the other procedures of this chapter, and whether or not any drought response stage has been declared, the city council may establish mandatory restrictions on lawn watering for water conservation, water conservation education, or peak water use demand purposes. Such restrictions may include, but not be limited to, the establishment of a mandatory lawn watering rotation schedule.

Whenever the city council directs that mandatory restrictions on lawn watering be imposed, the city manager shall cause a notice of such restrictions to be given through the general news media and by publication in the official city newspaper. The restrictions shall be effective upon publication for the duration and in the manner set forth in the notice.

- (b) Upon the imposition of mandatory restrictions under this section, any violation of the provisions of this section and the notice given under the authority of this section shall be deemed a misdemeanor. All enforcement and procedural provisions of Sections 17.14.090 and 17.14.100(a) apply to the provisions of this section, but the penalties for violation of the provisions of this section shall be an administrative fee of \$250 per violation.

SECTION 2. The original of Chapter 17.14 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after November 1, 2013, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 8th day of October, 2013

Carl Brewer, Mayor
City of Wichita

ATTEST:

Karen Sublett,
City Clerk

Approved as to Form:

Gary E. Rebenstorf,
Director of Law

ORDINANCE NO. 49-585

AN ORDINANCE AMENDING CHAPTER 17.14 OF THE
CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO DROUGHT
RESPONSE ACTIONS AND REPEALING THE PRIOR VERSION OF SAID
CHAPTER.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Chapter 17.14, of the Code of the City of Wichita is hereby amended to read as follows:

Sec. 17.14.010. Purpose.

The purpose of this chapter is to provide for the actions in response to drought conditions and include the declaration of four stages of drought response. It also provides for the implementation of the drought response plan and voluntary and mandatory water conservation measures throughout the city in the event such a drought stage is declared.

Sec. 17.14.020. Definitions.

- (a) "Customer," as the term is used in this chapter means the customer of record using water for any purpose from the city's water distribution system and for which a regular charge is made.
- (b) "Drought response plan" shall be the city's drought action plan, as may be supplemented or amended from time to time, on file with the city clerk.
- (c) "Outdoor water," as the term is used in this chapter includes, but is not limited to: any water used through an irrigation system, an outdoor hose, or hand watering container outside of a physical structure.
- (d) "Water," as the term is used in this chapter, means water available to the city for treatment by virtue of its water rights or any treated water introduced by the city into its water distribution system.
- (e) The following stages of drought response are established:

Stage 1: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 70% and 89%.

Stage 2: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 50% and 69%.

Stage 3: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 35% and 50%.

Stage 4: Triggered when the 12-month moving average of Cheney Reservoir's conservation pool level is between 0% and 34%.

(f) For purposes of determining drought response stages, the term "conservation pool level" means the percentage of the conservation pool that is filled

Sec. 17.14.030. Declaration of drought stages.

The 12-month average of the conservation pool level in Cheney Reservoir is the basis for establishing drought stages, according to the levels provided in Section 17.14.020. The public works & utilities director shall monitor the lake level in Cheney Reservoir. When the 12-month moving average of Cheney's conservation pool level indicates the existence of a drought response stage in accordance with Section 17.14.020, the city manager will issue a public declaration of such drought response stage. Should the lake level at Cheney Reservoir subsequently exceed the maximum threshold of Stage 1 as provided in Section 17.14.020, the city manager shall issue a public declaration that previously declared drought response measures are terminated.

Sec. 17.14.040. Stage 1 measures.

Upon the declaration of a Stage 1 drought response stage as provided in Section 17.14.030, the city manager will call on all water consumers to employ voluntary water conservation measures to limit or eliminate water use. The city shall offer incentives or rebates to encourage indoor and outdoor water conservation. The city shall implement conservation measures in its own operations, in accordance with the drought response plan.

Sec. 17.14.050. Stage 2 measures.

Upon the declaration of a Stage 2 drought response stage as provided in Section 17.14.030, the city manager will implement the mandatory water conservation measures set forth below. Food producing gardens utilizing drip irrigation or hand watering shall be Stage 2 exempt. Businesses that generate their core economic activity from usage of outdoor water shall be Stage 2 exempt. Such businesses include, but are not limited to, golf courses, car washes, nurseries, sod suppliers, and others identified by the city manager. The city shall implement water conservation measures in its own operations, including measures in the drought response plan and shifting the some of the water allocation from Cheney Reservoir to other sources. Mandatory water conservation measures include the following and noncompliance by customers who are not Stage 2 exempt shall be subject to the penalties provided in Section 17.040.100:

(a) Restricting outdoor water usage to one day per week, in accordance with (b), below;

(b) Customers at real properties northwest of the Central & Broadway intersection may use outdoor water on Mondays; customers at real properties northeast of Central & Broadway may use outdoor water on Tuesdays; customers at real properties southwest of Central & Broadway may use outdoor water on Wednesdays; customers at real properties southeast of Central & Broadway may use outdoor water on Thursdays; no outdoor water can be used on Fridays, Saturdays, or Sundays by customers who are not Stage 2 exempt;

- (c) Prohibiting all customers who are not Stage 2 exempt from using outdoor water from 10:00am until 8:00pm.

Sec. 17.14.060. Stage 3 measures.

Upon the declaration of a Stage 3 drought response stage as provided in Section 17.14.030, the city manager will prohibit all usage of outdoor water by customers who are not Stage 3 exempt. Food producing gardens utilizing drip irrigation or hand watering shall be Stage 3 exempt. Businesses that generate their core economic activity from usage of outdoor water shall be Stage 3 exempt. Such business include, but are not limited to, golf courses, car washes, nurseries, sod suppliers, and others identified by the city manager. The city shall implement water conservation measures in its own operations, in accordance with the drought response plan. Any use of outdoor water outdoors by customers who are not Stage 3 exempt shall be subject to the penalties provided in Section 17.040.100.

Sec. 17.14.070. Stage 4 measures.

Upon the declaration of a Stage 4 drought response stage as provided in Section 17.14.030, the city manager will implement mandatory water conservation measures for all customers, including prohibition of usage of outdoor water. No exemptions shall be provided from the prohibition on usage of outdoor water. The city shall implement all possible water conservation measures in its own operations. All customers, except those specifically exempted below, are required to reduce their water usage by 15% from their Average Winter Consumption, as defined in Section 17.12.090, as it was most recently calculated as of the declaration of the Stage 4 drought response stage. Any noncompliance with the provisions of this section shall be subject to the penalties provided in Section 17.040.100. The following customers are exempt from the requirement to reduce water usage by 15% from their Average Winter Consumption.

- (a) Wesley Medical Center
- (b) Galichia Heart Hospital
- (c) Wesley West Hospital
- (d) Via Christi Hospital – St. Francis
- (e) Via Christi Hospital – St. Joseph
- (f) Via Christi Hospital – St. Teresa
- (g) Via Christi Rehabilitation Hospital
- (h) Kansas Medical Center
- (i) Robert J. Dole VA Medical Center
- (j) Kansas Spine Hospital
- (k) Select Specialty Hospital

Sec. 17.14.080. Regulations.

During the effective period of any drought response stage as provided for in Section 17.14.030, the city manager is empowered to promulgate such regulations consistent with the provisions of this chapter as may be necessary to carry out and enforce the restrictions and penalties in effect for that drought response stage.

Sec. 17.14.090. Enforcement.

Whenever a drought response stage is declared to exist as set forth in this chapter, in addition to all law enforcement officers, the following personnel employed by the city shall have the power to enforce the provisions of this chapter:

- (a) Commissioned officers of the Wichita fire department;
- (b) Parking control checkers;
- (c) Traffic service officers;
- (d) All deputies under the supervision of the director of the metropolitan area building and construction department;
- (e) Any employee of the Public Works & Utilities department as designated by the director.

Such personnel shall have the power of a law enforcement officer for the purpose of signing a complaint and serving such complaint and a notice to appear upon any person where there is probable cause to believe such person has or is violating a section of this chapter.

Sec. 17.14.100. Violations, disconnections and penalties.

- (a) Upon violation of any water use restrictions imposed pursuant to Sections 17.14.050, Section 17.14.060, or 17.14.070 of this chapter, written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to city enforcement personnel who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the city manager or the city manager's designee determines is reasonable under the circumstances. If the order is not complied with, the city manager or the city manager's designee may assess an administrative fee or restrict water service to the customer in accordance with the standards in subsection (b), below, subject to the following procedures:
 - (1) The city shall give the customer notice by mail or actual notice that an administrative fee will be assessed or water service will be restricted within a specified time due to the violation and that the customer will have the opportunity to appeal the administrative fee or restriction by requesting a hearing scheduled before the city manager or a person designated as a hearing officer by the city manager;
 - (2) If such a hearing is requested by the customer charged with the violation by the specified date, he or she shall be given a full opportunity to be heard before the fee is assessed or the restriction or termination is ordered;
 - (3) The city manager or hearing officer shall make findings of fact and order whether a fee should be assessed or service should continue or be restricted;
 - (4) In the event no hearing is requested by the specified date, full water service shall be reinstated when the city is no longer in a Stage 4 drought response stage, as provided in Section 17.14.100(e) and all administrative fees have been paid.
- (b) Upon the first violation of any water use restrictions imposed pursuant to Section 17.14.050 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$50. Subsequent violations will be punishable with an administrative fee of \$100 per violation.
- (c) Upon the first violation of any water use restrictions imposed pursuant to Section 17.14.060 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation.
- (d) Upon the first violation of the outdoor water prohibition imposed pursuant to Section 17.14.070 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee

of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation and installation of a water flow restrictor. The flow restrictor will decrease the amount of water flowing through the meter to a customer and will not be removed until the city is no longer in a Stage 4 drought response stage.

- (e) Upon the first violation of the required 15% reduction imposed pursuant to Section 17.14.070 of this chapter, a written warning shall be issued. A second violation will result in an administrative fee of \$250. Subsequent violations will be punishable with an administrative fee of \$500 per violation and installation of a water flow restrictor. The flow restrictor will decrease the amount of water flowing through the meter to a customer and will not be removed until the city is no longer in a Stage 4 drought response stage.
- (f) All administrative fees shall be subject to the same terms of payment that are set forth in Section 17.12.100 for regularly scheduled water meter charges, following the completion of the procedures in subsection (a), above.
- (g) In addition to disconnection/reconnection fees provided by Section 17.12.090, a fee of two hundred dollars shall be paid for the reconnection of any water service restricted pursuant to this chapter.

Sec. 17.14.110. Emergency restriction and termination.

- (a) Nothing in this chapter shall limit the ability of any properly authorized city official from restricting or terminating the supply of water to any or all customers upon the determination of such city official that emergency restriction or termination of water service is required to protect the health and safety of the public.

Sec. 17.14.120. Notification required with sprinkler systems.

Installers of lawn watering irrigation or sprinkling water systems, upon installing a lawn watering irrigation or sprinkling system, shall provide a copy of this chapter to the owner of the lawn watering irrigation or sprinkling system.

Sec. 17.14.130. Exemptions—Watering from wells—Sign required.

- (a) Persons using water from a well for any class of use as defined in this chapter shall be exempt from the penalties of this chapter, pursuant to Section 17.14.130(b).
- (b) To qualify for the exemption, persons using water from a well as set forth in subsection (a) shall, while engaged in such use(s), display a sign with the words "well water" upon it in a location that is readily visible to the general public.

Sec. 17.14.140. Severability.

If any provision of this chapter is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and its applicability to other persons and circumstances shall not be affected thereby.

Sec. 17.14.140A. Mandatory lawn watering rotation schedule.

- (a) In addition to the other procedures of this chapter, and whether or not any drought response stage has been declared, the city council may establish mandatory restrictions on lawn watering for water conservation, water conservation education, or peak water use demand purposes. Such restrictions may include, but not be limited to, the establishment of a mandatory lawn watering rotation schedule.

Whenever the city council directs that mandatory restrictions on lawn watering be imposed, the city manager shall cause a notice of such restrictions to be given through the general news media and by publication in the official city newspaper. The restrictions shall be effective upon publication for the duration and in the manner set forth in the notice.

- (b) Upon the imposition of mandatory restrictions under this section, any violation of the provisions of this section and the notice given under the authority of this section shall be deemed a misdemeanor. All enforcement and procedural provisions of Sections 17.14.090 and 17.14.100(a) apply to the provisions of this section, but the penalties for violation of the provisions of this section shall be an administrative fee of \$250 per violation.

SECTION 2. The original of Chapter 17.14 is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force on and after October 25th, 2013, and upon publication once in the official City paper.

ADOPTED at Wichita, Kansas, this 22th day of October, 2013

Carl Brewer, Mayor
City of Wichita

ATTEST:

Karen Sublett,
City Clerk

Approved as to Form:

Gary E. Rebenstorf,
Director of Law

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Public Hearing for West Bank Apartments TIF Project Plan (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Close the public hearing and approve first readings of the ordinance adopting the Tax Increment Financing (TIF) Project Plan and the home rule ordinance authorizing the Development Agreement and issuance of bonds.

Background: On November 23, 2004, the City Council adopted an ordinance expanding the East Bank Redevelopment District to include the West Bank of the Arkansas River, to allow the use of TIF and STAR Bonds to pay a portion of the costs for redevelopment projects located within the expanded District. On May 17, 2011, the City Council approved the Downtown Incentives Policy which established procedures and requirements for the use of public incentives for downtown development projects, based on the Project Downtown Master Plan.

On August 6, 2013, the City Council selected River Vista LLC, a development group comprised of George Laham, David Burk, David Wells and Bill Warren (the “Developer”), for the purpose of developing the former West Bank Stage area into a mixed-use residential/commercial complex, to be called “River Vista” (the “West Bank Apartments Project”)

On August 27, 2013, the City Council adopted a resolution setting a public hearing to consider approval of the West Bank Apartments Project Plan. The Council action set October 8, 2013 as the date of public hearing for the item.

Analysis: The West Bank Apartments Project consists of a mixed used development of the former West Bank stage property along the west side of the Arkansas River between Douglas Avenue and 2nd Street. The Developer will construct a 154-unit apartment complex overlooking the west bank of the Arkansas River, along with parking facilities and other amenities. The development will provide pedestrian access to the river and include “Boats and Bikes”, a commercial enterprise for the rental of bicycles and boats to the general public for use along the river. Parking facilities include structured parking for tenants and 134 surface parking stalls for the public. A 20,000 square foot two-story commercial building is planned along McLean Boulevard as a second phase. The estimated cost for the first phase is \$24,800,000.

Tax Increment Financing (TIF)

TIF uses the increase in property tax revenue resulting from the growth in property value generated by redevelopment of real property to pay the debt service on City bonds issued to finance a portion of the eligible project costs. The growth in property value is measured from the value in the year the TIF district was first established (1995) and the tax revenue is measured using city, county and school district tax levies. The River Vista project site, which up to now has been non-taxable property, is projected to be valued at \$14,330,000 for tax purposes when the Phase I residential project is complete. The following table summarizes the TIF financial feasibility study that is part of the West Bank Apartments Project Plan:

1995 Assessed Valuation	\$0
Projected 2016 Assessed Valuation	\$1,947,448
Captured Assessed Valuation	\$1,947,448
Applicable Mill Levy	119.102 mills
Estimated 2016 TIF Revenue	\$231,945
Projected 2016 TIF Bond Debt Service Payment	\$166,566
Debt Service Coverage Ratio	1.4 to 1

The Developer is seeking the use of TIF as part of the financing for sitework, infrastructure improvements and parking facilities. The cost of the TIF related improvements will be limited to \$2,500,000. Use of TIF requires adoption of a TIF project plan by a two-thirds majority vote of the City Council. The estimated uses of funds for the TIF-funded improvements are as follows:

Uses:	Parking Structure	\$ 1,040,000
	Paving, Sidewalks and Landscaping	\$ 549,951
	Utility Relocation and Extensions	\$ 254,000
	Signalized Intersection on McLean	\$ 300,000
	Fees and Miscellaneous Costs	\$ 356,049
	Total Uses	\$ 2,500,000

The attached Project Plan has been prepared in consultation with the Wichita-Sedgwick County Metropolitan Area Planning Commission, which has made a finding that the project is consistent with the Comprehensive Plan for development of the area. After closing the public hearing, the City Council may adopt the TIF Project Plan by ordinance, by two-thirds majority vote. Once the ordinance is adopted and transmitted to the County Clerk, the City will be authorized to use Tax Increment Financing to finance eligible project costs.

Development Agreement

The City will sell the Phase I and Phase II project site to the Developer for \$100,000. The City will provide TIF funding in an amount not to exceed \$2,500,000 for site work, infrastructure improvements and construction of parking facilities. In addition, the development agreement states the City's intent to issue Industrial Revenue Bonds (IRBs) in order to provide an exemption on sales tax for the costs of construction materials and furnishings for the project.

The development agreement includes certain conditions precedent to be met prior to the transfer of land, including the Developer providing evidence of adequate financing for construction of Phase I, executed construction contracts and bonds, zoning and permitting and the City gaining State approval for the use of \$2,500,000 in Sales Tax and Revenue (STAR) funds for river bank improvements.

The project area will be platted by the developer and include dedicated public access through the project area to the river. The property will be platted into three parcels, Phase I, Phase II and Delano Park. The City will have the right to purchase back the Phase II parcel if "vertical development" on the lot does not occur within 15 years, for the proportional price paid, inflated by the Consumer Price Index. The Developer agrees to provide maintenance at its cost for all infrastructure improvements on lots I and II. It will also provide for irrigation, maintenance and replacement of non-hardscape improvements to the Riverbank improvements at its cost, and to Delano Park, at the City's expense at an annually agreed not-to-exceed amount. The shared maintenance agreement is renewable every three years.

Financial Considerations: The City Contribution in the amount of \$2,500,000 will be financed by full faith and credit bonds paid by TIF revenue generated within the West Bank project area. Any shortfall in revenue needed for debt service on the bonds will be paid for by the Developer, backed by joint and several personal guaranties by the principals of River Vista LLC.

Legal Considerations: The Law Department has reviewed and approved as to form the attached ordinance, which is required for the adoption of a redevelopment project plan under the state Tax Increment Financing statutes, the home rule ordinance required to authorize the execution of the development agreement and bonding authorization needed to initiate the TIF-funded improvement project. The notice for a public hearing on the City's consideration of the TIF project plan has been given pursuant to law. In order to adopt the TIF project plan, the ordinance must be approved by a two-thirds majority vote.

Recommendation/Action: It is recommended that the City Council:

1. Close the public hearing;
2. Approve first reading of the ordinance adopting the West Bank Apartments TIF Project Plan;
3. Approve first reading of the home rule ordinance authorizing the execution of the Development Agreement and authorizing issuance of bonds for the TIF-funded improvements; and
4. Authorize the necessary signatures

Attachment(s):

- West Bank Apartments Redevelopment Project Plan
- Development Agreement between the City and River Vista, LLC
- Ordinance adopting the TIF Project Plan
- Home Rule Ordinance authorizing the execution of the Development Agreement and bond issuance

(PUBLISHED IN THE *WICHITA EAGLE* ON OCTOBER 25, 2013)

ORDINANCE NO. 49-586

AN ORDINANCE ADOPTING A REDEVELOPMENT PROJECT PLAN FOR THE WEST BANK APARTMENTS PROJECT AREA LOCATED WITHIN THE EAST BANK REDEVELOPMENT DISTRICT PURSUANT.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) and Ordinance No. 42-966, passed December 12, 1995, and published December 15, 1995, City Council (the “Governing Body”) of the City established a redevelopment district pursuant to the Act, known as the East Bank Redevelopment District (the “District”); and

WHEREAS, by Ordinance No. 45-339, passed June 25, 2002, and published June 29, 2002, the City removed certain property and reduced the boundaries of the District pursuant to K.S.A. 12-1771(g); and

WHEREAS, Ordinance No. 46-407, passed November 23, 2004, and published November 29, 2004, the City added certain property and increased the boundaries of the District pursuant to K.S.A. 12-1771(f) and made a substantial change to the District Plan for the District; and

WHEREAS, the District Plan for the District provided that redevelopment of the District would be in several project areas within the District as set forth in separate redevelopment plans to be approved by the governing body of the City pursuant to the Act; and

WHEREAS, pursuant to Ordinance No. 49-557, passed August 13, 2013, and published August 16, 2013, a non-substantial amendment to Ordinance No. 46-407 and the District Plan was made by attaching a map of the proposed project areas; and

WHEREAS, by Ordinance No. 45-983, passed January 3, 2004, and published February 6, 2004, the City adopted a redevelopment project plan for the WaterWalk Redevelopment Project Area within the District; and

WHEREAS, the City has prepared an additional redevelopment project plan for the West Bank Apartments Project Area (the “Project Area”), dated as of June 20, 2013, which includes, but is not limited to, the development and construction of public parking, street and signalization improvements and certain site and public improvements, all in conjunction with development of an apartment and commercial structures by a private developer within the Project Area (the “Project Plan”) and is considering adoption of the Project Plan; and

WHEREAS, on August 22, 2013, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Project Plan and has adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, pursuant to the requirements of the Act and Resolution No. 13-161, adopted August 27, 2013, the Governing Body set a public hearing to consider the adoption of the Project Plan on October 8, 2013 at 9:00 a.m. or as soon thereafter as the matter could be heard, at the City Council Chambers in City Hall, 455 N. Main, Wichita, Kansas; and

WHEREAS, notice of such public hearing was provided as required by the Act; and

WHEREAS, on October 8, 2013, the public hearing was opened, public comment was received by the Governing Body and the public hearing was closed; and

WHEREAS, the Governing Body is authorized by the Act to adopt the Project Plan by ordinance passed by not less than two-thirds vote of the Governing Body.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Project Plan Approval. The Project Plan for the redevelopment of the Project Area within the District, together with all attachments and exhibits thereto, which is on file in the office of the City Clerk, is hereby adopted.

Section 2. Effective Date This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City newspaper.

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PASSED by not less than two-thirds vote of the City Council of the City of Wichita, Kansas, on October 22, 2013.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

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CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the original Ordinance No. 49-[____] (the “Ordinance”) of the City of Wichita, Kansas (the “City”); that said Ordinance was passed by the City Council on October 22, 2013, that the record of the final vote on its passage is found on page ____ of journal ____; that it was published in the official newspaper of the City on October 25, 2013; and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: October 25, 2013.

Karen Sublett, City Clerk

(PUBLISHED IN THE *WICHITA EAGLE* ON OCTOBER 25, 2013)

ORDINANCE NO. 49-590

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT AND THE ISSUANCE OF BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF DESIGN AND CONSTRUCTION OF PUBLIC PARKING, INFRASTRUCTURE IMPROVEMENTS AND SITE IMPROVEMENTS RELATED TO THE EAST BANK REDEVELOPMENT DISTRICT PURSUANT, WEST BANK APARTMENTS PROJECT AREA.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the "Act") and Ordinance No. 42-966, passed December 12, 1995, and published December 15, 1995, City Council (the "Governing Body") of the City established a redevelopment district pursuant to the Act, known as the East Bank Redevelopment District (the "District"); and

WHEREAS, by Ordinance No. 45-339, passed June 25, 2002, and published June 29, 2002, the City removed certain property and reduced the boundaries of the District pursuant to K.S.A. 12-1771(g); and

WHEREAS, Ordinance No. 46-407, passed November 23, 2004, and published November 29, 2004, the City added certain property and increased the boundaries of the District pursuant to K.S.A. 12-1771(f) and made a substantial change to the District Plan for the District; and

WHEREAS, the District Plan for the District provided that redevelopment of the District would be in several project areas within the District as set forth in separate redevelopment plans to be approved by the governing body of the City pursuant to the Act; and

WHEREAS, pursuant to Ordinance No. 49-557, passed August 13, 2013, and published August 16, 2013, a non-substantial amendment to Ordinance No. 46-407 and the District Plan was made by attaching a map of the proposed project areas; and

WHEREAS, the City has prepared an additional redevelopment project plan for the West Bank Apartments Project Area (the "Project Area"), dated as of June 20, 2013, which includes, but is not limited to, the development and construction of public parking, street and signalization improvements and certain site and public improvements, all in conjunction with development of an apartment and commercial structures by a private developer within the Project Area (the "Project Plan"), has negotiated a development agreement with respect thereto and is considering adoption of the Project Plan and approval of such development agreement; and

WHEREAS, on August 22, 2013, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Project Plan and has adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, pursuant to the requirements of the Act and Resolution No. 13-161, adopted August 27, 2013, the Governing Body set a public hearing to consider the adoption of the Project Plan on October 8, 2013 at 9:00 a.m. or as soon thereafter as the matter could be heard, at the City Council Chambers in City Hall, 455 N. Main, Wichita, Kansas; and

WHEREAS, by Ordinance No. 49-[____], passed October 22, 2013, and to be published October 25, 2013, the City adopted the Project Plan; and

WHEREAS, the Project Plan also authorizes the issuance by the City of its full faith and credit tax increment bonds of the City in order to finance all or a portion of the redevelopment project costs to be paid by the City; and

WHEREAS, the City has negotiated a development agreement with the developer of the Project Area to implement the Project Plan, (the “Development Agreement”), which has been submitted to the Governing Body for consideration; and

WHEREAS, pursuant to the Constitution, particularly Article 12, Section 5 thereof, and statutes of the State of Kansas, particularly of K.S.A. 12-101 *et seq.*, as amended (collectively, the “Home Rule Act”), the Act and K.S.A. 13-1024a, as amended by Charter Ordinance No. 156 of the City (the “Charter Ordinance”), the Governing Body hereby finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that the City enter into the Development Agreement, authorize, in order to implement the Project Plan, the issuance of its: (a) full faith and credit tax increment bonds, in one or more series, in an aggregate principal amount necessary to finance eligible costs authorized by the Act, and related reserves and financing costs, and (b) the issuance of general obligation bonds of the City, in one or more series, in an aggregate principal amount necessary to finance costs authorized by the Home Rule Act and/or the Charter Ordinance, and related reserves and financing costs (collectively, the “Bonds”).

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Development Agreement. The Development Agreement is hereby approved in substantially the form presented to the Governing Body, with such changes as may be approved by the City Attorney, which provides, in part that it is necessary to design and construct public parking, street and signalization improvements and certain site and public improvements, located within the Project Area as described in the Project Plan. The Mayor is hereby authorized to execute the Development Agreement by and on behalf of the City and the City Clerk is hereby authorized to attest such signature.

SECTION 2. Financing Authorization. The Governing Body hereby declares it to be its intention to issue and sell, pursuant to the Home Rule Act, the Act and the Charter Ordinance, the Bonds, to finance all or a portion of the project costs described in **Section 1** hereof to be paid by the City pursuant to the Development Agreement. Project Costs allocated to the City pursuant to the Development Agreement not paid from proceeds of the Bonds may be paid from available revenues of the City. In order to temporarily finance the aforesaid project costs prior to the issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes, in one or more series, in an aggregate principal amount not exceeding the authorization for the Bonds (the “Notes”). The Bonds and Notes may be issued to reimburse the City for project costs pursuant to Treasury Regulation §1.150-2.

SECTION 3. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City newspaper.

PASSED by the Governing Body on October 22, 2013.

Carl Brewer, Mayor

(Seal)

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney

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CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the original Ordinance No. 49-[____] (the “Ordinance”) of the City of Wichita, Kansas (the “City”); that said Ordinance was passed by the City Council on October 22, 2013, that the record of the final vote on its passage is found on page ____ of journal ____; that it was published in the official newspaper of the City on October 25, 2013; and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: October 25, 2013.

Karen Sublett, City Clerk

City of Wichita
East Bank Redevelopment District
West Bank Apartments
Project Plan

August 8, 2013

Prepared by City of Wichita
Office of Urban Development

I N D E X

1. Comprehensive Financial Feasibility Study
2. Redevelopment District Plan
3. Map and Legal Description of Property to be Redeveloped
4. Relocation Assistance Plan
5. Description of Proposed Redevelopment Project
6. Development Agreement
7. City Council Ordinances and Resolutions
8. Metropolitan Area Planning Commission Resolution

*Comprehensive Financing Feasibility Study for the
West Bank Apartments Project
within the
East Bank Redevelopment District
City of Wichita, Kansas*

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PROJECT DESCRIPTION	3
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PROJECTED EXPENDITURES (COSTS)	5
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Projected Bond Cash Flow Report	EXHIBIT IV

Overview

Sections 12-1770 through 12-1780g of the Kansas Statutes (“the Act”) provide a means for cities to finance all or a portion of public infrastructure and redevelopment costs with incremental real estate and sales taxes. The purpose of the Act is to “promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities, and to assist in the development and redevelopment of blighted areas and deteriorating areas which are not yet blighted, but may be so in the future, located within cities...”.

A city may exercise the powers conferred under the Act provided that the governing body of the city has adopted a resolution finding that the specific area sought to be developed or redeveloped is a blighted area, a conservation area or was designated an enterprise zone prior to July 1, 1992. In addition, the city must find that the conservation, development or redevelopment of such an area is necessary to promote the general and economic welfare of the city.

One or more redevelopment projects may be undertaken within a Redevelopment District created pursuant to the Act (“District”). Kansas Statutes require projects to be completed within 20 years from transmittal of the redevelopment project plan pursuant to K.S.A. 12-1776, with the exception of environmental investigation and remediation projects which must be completed within 20 years from the date the City enters into a consent decree with the Kansas Department of Health and Environment or the U.S. Environmental Protection Agency, unless the County and School District have expressly consented to a 10-year extension of the term.

For each redevelopment project undertaken within the District, a redevelopment project plan (“the Project Plan”) must be prepared in consultation with the City Planning Commission. The Project Plan must include the following:

1. A summary or copy of the Comprehensive Financial Feasibility Study.
2. A reference to the statutorily required district plan for the District.
3. A description and map of the area to be redeveloped (“the Project”).
4. The Relocation Assistance Plan (if applicable).
5. A detailed description of all buildings and facilities proposed to be constructed or improved.
6. Any other information the City deems necessary to advise the general public of the intent of the Project Plan.

The Comprehensive Financial Feasibility Study (this document) must show that the benefits derived from the specified redevelopment project will exceed the costs, and that the income therefrom will be sufficient to pay for the applicable project costs. Benefits are determined to be the aggregate revenues of the redevelopment project including increment income, assessment income, interest income, private party contributions and any other available funding sources. Costs are determined to be the total of eligible project expenditures as defined by K.S.A. 12-1770a, including the payment of principal and interest of debt used to finance the redevelopment project.

Pursuant to all the provisions of the Act, The City of Wichita has, by Ordinance No. 42-966 dated December 12, 1995, found a portion of the City was a blighted area and that redevelopment of the area is necessary to promote the general and economic welfare of the City. With the adoption of Ordinance No. 42-966, the City established and designated such area as the East Bank Redevelopment District (“the District”). On November 23, 2004, by adoption of Ordinance No. 46-407, the City expanded the boundaries of the District to include the east bank and west bank areas along the Arkansas River north of Douglas Avenue to the area of the Mid-America All Indian Center.

The City is currently considering the adoption of a Project Plan for the proposed West Bank Apartments Project (“the Project”) within the expanded East Bank Redevelopment District. The proposed West Bank Apartments Project is a 154-unit luxury apartment complex with boat and bike rental facility and storage for rowing shells and a potential future commercial development in an area located west of the Arkansas River, south of 2nd Street and north of Douglas Avenue.

The City will provide public funding, including but not limited to, tax increment financing and STAR financing to finance the costs of various public infrastructure and improvements.

General Description of Tax Increment

Property tax increment financing involves the creation of an increment (increase over a base value) in the real estate taxes that are generated from a defined geographic area of a community. Upon establishment of a redevelopment district, the total assessed value of all taxable real estate within the district for that year is determined. This valuation is referred to as the district's "Original Assessed Value." Property taxes attributable to the district's Original Assessed Value are annually collected and distributed by the county treasurer to the appropriate city, county, school district and all other applicable taxing jurisdictions in the same manner as other property taxes.

As new development occurs within the redevelopment district, the total assessed value of the district, in any given year, will normally exceed its Original Assessed Value. Property taxes generated by applying the sum of the property tax rates of all applicable taxing jurisdictions to the incremental increase in assessed value (over and above the Original Assessed Valuation) is referred to as the "property tax increment". All property tax increment is collected by the County and distributed to the City to be deposited in a special tax increment fund.

Sales tax increment financing involves the creation of an increment (increase over a base value) in the local sales taxes that are generated from a defined geographic area of a community. Upon establishment of a redevelopment district, a base value of local sales tax collections within the district is determined. As new commercial development occurs within the redevelopment district, sales tax collections are expected to increase above the base value. Pursuant to city law governing the use of local sales tax revenue, the City does not intend to collect incremental sales tax revenues as "sales tax increment".

Tax increment funds may only be used to pay for certain statutorily-defined eligible project costs, including principal and interest on debt issued, in whole or in part, to finance eligible project costs within the redevelopment district. Such debt includes notes, special obligation bonds, full faith and credit tax increment bonds, and other debt instruments. The City intends to issue its full faith and credit tax increment bonds to finance West Bank Apartments Project costs that are eligible for tax increment financing, including infrastructure improvements, streetscaping and pedestrian improvements.

Project Description

The West Bank Apartments Project consists of a mixed use development of the former West Bank stage property along the west side of the Arkansas River between Douglas Avenue and 2nd Street. The project includes a 154-unit luxury apartment complex with boat and bike rental facility and storage for rowing shells and a potential future commercial development. Improvements to be financed by tax increment financing include street and parking improvements as well as site preparation, landscaping and relocation of utilities on the site.

Projected Revenues (Benefits) Captured Assessed Value

It is the City's intention to use the property tax increment generated by the District to pay the debt service on general obligation bonds issued by the City to finance a portion of its contribution to the Project. The property tax increment is based on the District's increase in assessed value over its Original Assessed Value. This increase in value is expected to be recorded beginning in January of 2014 through January of 2016 (project completion in 2015) and is referred to as the Captured Assessed Value.

The Total Assessed Value for the Project Area as of January 1, 2016 is estimated to be \$1,947,448. The Original Assessed Value of the Project Area, as assessed in January 2013 for taxes payable in 2013-2014, is \$0, according to data provided by the City of Wichita Geographic Information Service. Therefore, the Captured Assessed Value of the Project Area as of January 1, 2016 is \$1,947,448.

For the purpose of this analysis, it is assumed that the Total Assessed Value of the District will increase during the life of the project period at the annual inflation rate of 2%.

Property Tax Rates

In order to determine the amount of tax increment generated by the District in any given year, the Captured Assessed Value of the District must be multiplied by the sum of the tax rates for all *applicable* taxing jurisdictions for that year. For taxes levied in 2012 and payable in 2013, the applicable rate is 119.102 mills as shown below. The State of Kansas rate of 1.5 mills is not applicable to TIF and has been omitted from the following total:

<u>Jurisdiction</u>	<u>Mill Rate</u> <u>(2012)</u>
City of Wichita	32.471
Sedgwick County	29.447
USD No. 259	57.184
 TIF-Applicable Mill Rate	 119.102

Projected Property Tax Increment and Other Project Revenue

The projected property tax increment generated by the District is shown in column 8 of Exhibit III. Such projections are based on captured assessed values derived from captured assessed valuations and tax rates as previously discussed. It is assumed that Project construction will begin in 2013 and be completed before the end of 2015, and therefore achieve full valuation by January 1, 2016. It is estimated that in 2016 the property tax increment will be \$231,945.

All tax increment shall be allocated and paid by the Sedgwick County Treasurer to the City Treasurer in the same manner and at the same time as normal property taxes. All such incremental taxes must be deposited in a special fund of the City for the payment of eligible redevelopment costs.

Projected Expenditures (Costs)

A projected budget for the eligible project costs in the Project Area is listed below.

Sources	
Par Amount of Bonds	\$2,550,000.00
Uses	
Sitework	\$455,000.00
Infrastructure and Parking	2,045,000.00
Financing and Other Costs	<u>50,000.00</u>
	\$2,550,000.00

It is anticipated that all eligible project costs will be financed with general obligation (full faith and credit) tax increment financing bonds issued by the City. Exhibit IV illustrates a \$2,550,000 taxable general obligation tax increment bond issue sold in 2016.

Conclusions

Kansas Statutes require that the Comprehensive Financial Feasibility Study must demonstrate that the benefits derived from the Project will exceed the costs, and that the income therefrom will be sufficient to pay for all eligible project costs. As previously discussed, Exhibit III illustrates the projections of tax increment through the year 2033. Projected net tax increment revenue is available to pay debt service on outstanding general obligation bonds issued to finance eligible project costs.

Exhibit IV (Projected Bond Cash Flow Report) illustrates that projected tax increment from the District will be sufficient to pay for all eligible project costs including the projected debt service on general obligation bonds issued to finance such costs. As such, this report demonstrates that the revenues (benefits) of the District and Project Area exceed the expenditures (costs).

Assumptions Report

City of Wichita, Kansas
East Bank Redevelopment District
West Bank Apartments Project

Description of Project Area	See Map (Exhibit A)
Original Appraised Value (1/1/13)	\$678,200
Original Assessed Value (1/1/13)	0
2016 Appraised Value (1/1/16)	\$15,411,175
2016 Assessed Value (1/1/16)	\$ 1,947,448

<u>2012 Mill Rates (2013 Pay)</u>	<u>Total</u>	<u>TIF Applicable</u>
City of Wichita	32.471	32.471
Sedgwick County	29.447	29.447
USD No. 259	57.184	57.184
State of Kansas	1.500	NA
Total	120.602	119.102

Property Value Inflation Rate	2%
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Projected Tax Increment Report

City of Wichita, Kansas
East Bank Redevelopment District
West Bank Apartments Project

Levy & Appraised Year (1)	Year Taxes Distributed (2)	Total Assessed Value (3)	Original Assessed Value (4)	Captured Assessed Value (6)	Mill Rate (7)	Tax Increment Collected (a) (8)
2014	2015	\$ 486,862	-	486,862	119.102	57,986
2015	2016	\$ 1,460,586	-	1,460,586	119.102	173,959
2016	2017	\$ 1,947,448	-	1,947,448	119.102	231,945
2017	2018	\$ 1,986,397	-	1,986,397	119.102	236,584
2018	2019	\$ 2,026,125	-	2,026,125	119.102	241,315
2019	2020	\$ 2,066,647	-	2,066,647	119.102	246,142
2020	2021	\$ 2,107,980	-	2,107,980	119.102	251,065
2021	2022	\$ 2,150,140	-	2,150,140	119.102	256,086
2022	2023	\$ 2,193,142	-	2,193,142	119.102	261,208
2023	2024	\$ 2,237,005	-	2,237,005	119.102	266,432
2024	2025	\$ 2,281,745	-	2,281,745	119.102	271,760
2025	2026	\$ 2,327,380	-	2,327,380	119.102	277,196
2026	2027	\$ 2,373,928	-	2,373,928	119.102	282,740
2027	2028	\$ 2,421,406	-	2,421,406	119.102	288,394
2028	2029	\$ 2,469,834	-	2,469,834	119.102	294,162
2029	2030	\$ 2,519,231	-	2,519,231	119.102	300,045
2030	2031	\$ 2,569,616	-	2,569,616	119.102	306,046
2031	2032	\$ 2,621,008	-	2,621,008	119.102	312,167
2032	2033	\$ 2,673,428	-	2,673,428	119.102	318,411

EXHIBIT III

Projected Bond Cash Flow Report

City of Wichita, Kansas
East Bank Redevelopment District
West Bank Apartments Project

Annual Period Ending (1)	Principal (2)	G.O. Interest Rate (3)	Interest (4)	P&I (5)	Net Tax Increment (7)	Annual Balance (8)	Cumulative Balance (9)
9/1/2015		3.17%	-	-	57,986	57,986	57,986
9/1/2016	65,000	3.17%	41,710	106,710	173,959	67,248	125,235
9/1/2017	85,000	3.17%	81,566	166,566	231,945	65,379	190,614
9/1/2018	90,000	3.17%	78,474	168,474	236,584	68,110	258,723
9/1/2019	95,000	3.17%	75,221	170,221	241,315	71,095	329,818
9/1/2020	105,000	3.17%	71,797	176,797	246,142	69,345	399,163
9/1/2021	110,000	3.17%	68,193	178,193	251,065	72,871	472,035
9/1/2022	120,000	3.17%	64,401	184,401	256,086	71,685	543,719
9/1/2023	125,000	3.17%	60,411	185,411	261,208	75,797	619,516
9/1/2024	135,000	3.17%	56,211	191,211	266,432	75,221	694,737
9/1/2025	140,000	3.17%	51,791	191,791	271,760	79,969	774,706
9/1/2026	150,000	3.17%	47,140	197,140	277,196	80,056	854,762
9/1/2027	160,000	3.17%	42,245	202,245	282,740	80,494	935,256
9/1/2028	170,000	3.17%	37,094	207,094	288,394	81,300	1,016,556
9/1/2029	180,000	3.17%	31,673	211,673	294,162	82,489	1,099,045
9/1/2030	190,000	3.17%	25,968	215,968	300,045	84,077	1,183,123
9/1/2031	200,000	3.17%	19,965	219,965	306,046	86,082	1,269,204
9/1/2032	210,000	3.17%	13,646	223,646	312,167	88,521	1,357,725
9/1/2033	220,000	3.17%	6,997	226,997	318,411	91,413	1,449,138
	2,550,000		874,504	3,424,504	4,873,643	1,449,138	

District Plan

EXHIBIT B

REVISED DISTRICT PLAN FOR THE REDEVELOPMENT OF THE EAST BANK REDEVELOPMENT DISTRICT THROUGH TAX INCREMENT FINANCING

SECTION 1: PURPOSE

A district plan is required for inclusion in the establishment of a redevelopment district under K.S.A. 12-1771(a). The district plan is a preliminary plan that identifies proposed redevelopment project areas within the district, and describe in a general manner the buildings and facilities to be constructed, reconstructed or improved.

SECTION 2: DESCRIPTION OF TAX INCREMENT INCOME

Projects financed through tax increment financing typically involve the creation of an "increment" in real estate property tax income. The increment is generated by segregating the assessed values of real property located within a defined geographic area such that a portion of the resulting property taxes are paid to the City to fund projects in the redevelopment district, and the remaining portion is paid to all taxing jurisdictions. The portion of property taxes paid to the City in this way is determined increase in the assessed value of the properties within the redevelopment district as a result of the new development occurring within the area. When the aggregate property tax rates of all taxing jurisdictions are applied to this increase in assessed property value from new development, increment income is generated. Public improvements within the district may be funded by the City and repaid over a specified period of time with this increment income. The property taxes attributable to the assessed value existing prior to redevelopment, the "original valuation," are distributed to all taxing jurisdictions just as they were prior to redevelopment. This condition continues until all eligible project costs are funded, or for the 20-year duration of the established district, as defined by statute, whichever is shorter.

SECTION 3: BUILDINGS AND FACILITIES

The proposed redevelopment district is within the city limits of Wichita, Kansas. The district is generally bounded on the north by Central Avenue and Greenway Boulevard, on the east by Waco Avenue and Main Street, on the south by Kellogg Street and on the west by McLean Boulevard.

This area included in the proposed district has been the object of significant public redevelopment efforts for over forty years. The Century II Civic Center was undertaken as a major urban renewal project in the 1960s, as was the construction of the main branch of the Wichita Public Library. In the 1970s, the old City Library was redeveloped as a science museum, old City Hall was reopened as the Wichita/Sedgwick County Historic Museum and Century II was expanded by the addition of Expo Hall. During the 1980s, the City concentrated on acquisition of property along the east bank of the Arkansas River in order to clear the land for future public redevelopment projects, including the construction of a convention hotel. In the 1990s, the City continued to acquire land on the east bank, and together with Sedgwick County, redeveloped the West Bank of the Arkansas River into the Exploration Place science museum.

The condition of the buildings in the district that predate the recent redevelopment efforts is typical of that of a seventy year old central business district. Many aging commercial and office buildings stood vacant due to the migration of commercial businesses to the suburbs during the 1970s and 1980s. However many of the buildings in the proposed redevelopment district have been demolished during this period. The proposed redevelopment plan is intended provide the catalyst that will help complete the downtown revitalization process that started over thirty years ago.

SECTION 4: REDEVELOPMENT

Redevelopment plans center around the construction of a 300-room full-service convention hotel adjacent to the Century II Expo Hall, the River Corridor improvements and the WaterWalk mixed-use commercial development. The Hyatt Regency Hotel was developed in 1996, and serves as the "headquarters" hotel for large conventions at Century II. In addition to the hotel, the City built and operates a 12,000 square foot conference center and a 500-car parking garage adjoining both the hotel and Century II. Both the Douglas Avenue Bridge and the Lewis Street Bridge have been substantially reconstructed, based on designs selected through a nationwide design competition, and a pedestrian promenade along the east bank of the Arkansas River, has been constructed from Kellogg to Douglas. In addition, Waterman, Wichita and Lewis Streets on the east bank, and McLean Boulevard on the west bank have been improved and upgraded with appropriate streetscape designs.

Current plans for the next phases of redevelopment in the area include the public-private development of a major commercial, entertainment and tourism area in the immediate vicinity of the Arkansas River between the Kellogg and Seneca bridges, which will include restaurants, shops, offices and apartments. The WaterWalk Project will include as public amenities a meandering waterway feature, a small outdoor amphitheater, plazas, fountains, walkways, a pedestrian bridge across the Arkansas River and ample public parking facilities. The River Corridor Project will include riverbank promenades, water features, a large outdoor amphitheater and renovation of the Keeper of the Plains complex at the confluence of the Arkansas River and the Little Arkansas River. The goal is to create a major tourism attraction that will bring people from throughout the State of Kansas and the United States.

SECTION 5: SUMMARY

Per statute, the above-mentioned redevelopment projects will be presented to the Governing Body in segments through the adoption of separate Redevelopment Plans. Each Plan will identify specific project areas located within the established redevelopment district and will include detailed descriptions of the projects as well as a financial feasibility study that shows the economic benefits out-weigh the costs. Project Plans must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following proper notification of property owners and occupants, before they can be adopted by a two-thirds majority vote of the Governing Body. Only then can tax increment income be spent on redevelopment projects. *A map generally describing the various project areas is attached hereto as Schedule 1.*

East Bank Redevelopment District

City of Wichita, Kansas

East Bank
Redevelopment
District

Property Parcels inside
Redevelopment District

Property Parcels outside
Redevelopment District

To view, click on the

Map Data Source

Property Parcels

provided by

Wichita County GIS

Road Center Lines

provided by

City of Wichita

Map Data Source

Property Parcels

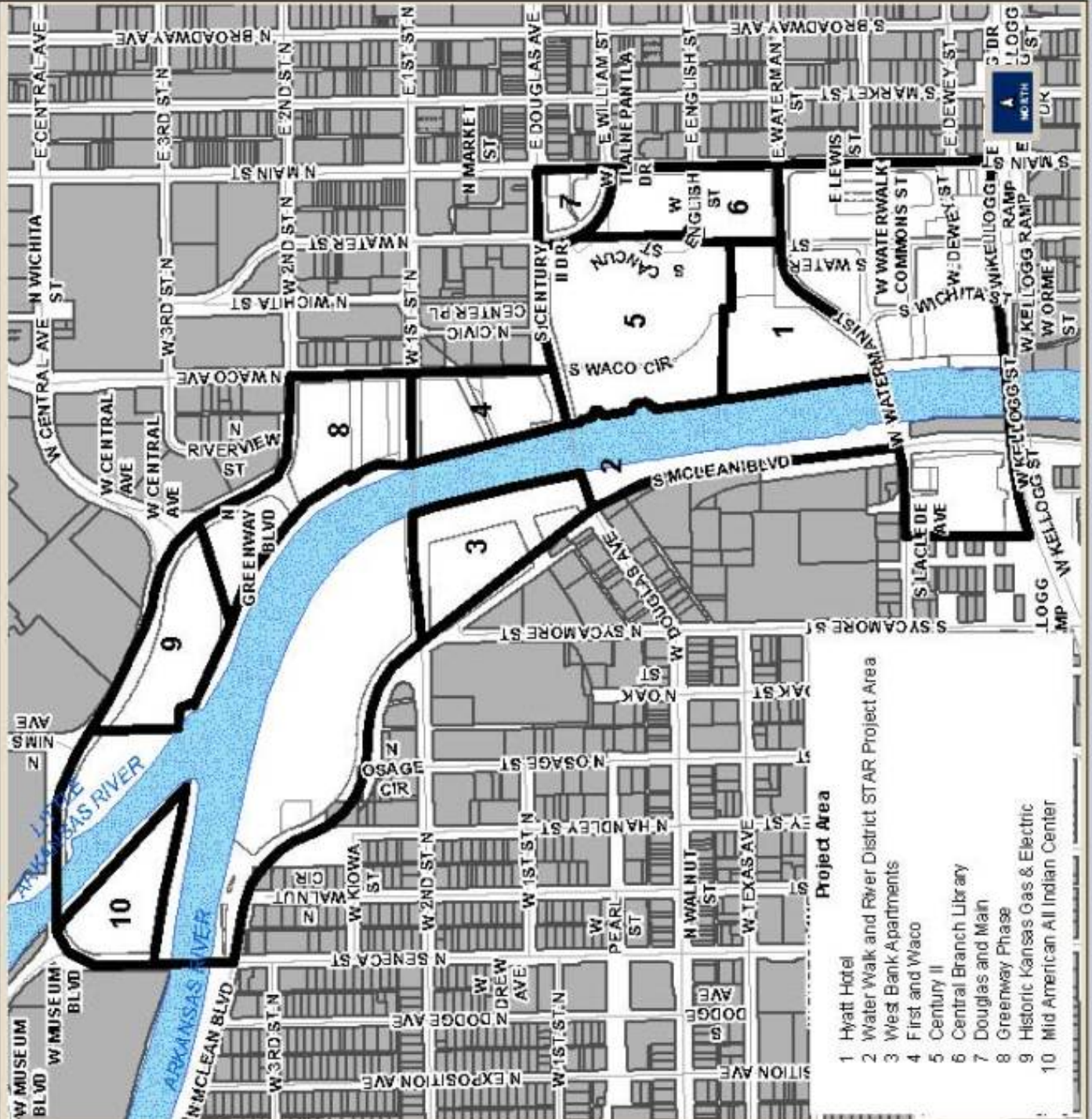
provided by

Wichita County GIS

Road Center Lines

provided by

City of Wichita







Project Area

- 1 Hyatt Hotel
- 2 Water Walk and River District STAR Project Area
- 3 West Bank Apartments
- 4 First and Waco
- 5 Century II
- 6 Central Branch Library
- 7 Douglas and Main
- 8 Greenway Phase
- 9 Historic Kansas Gas & Electric
- 10 Mid American All Indian Center

Map and Legal Description of Property to be Redeveloped

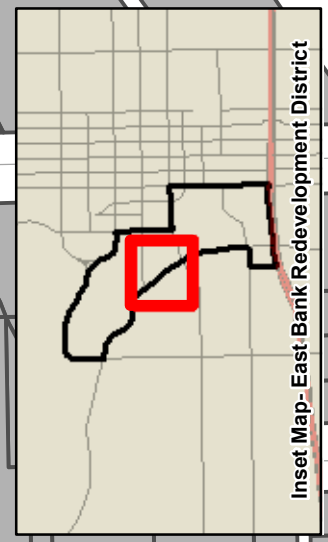
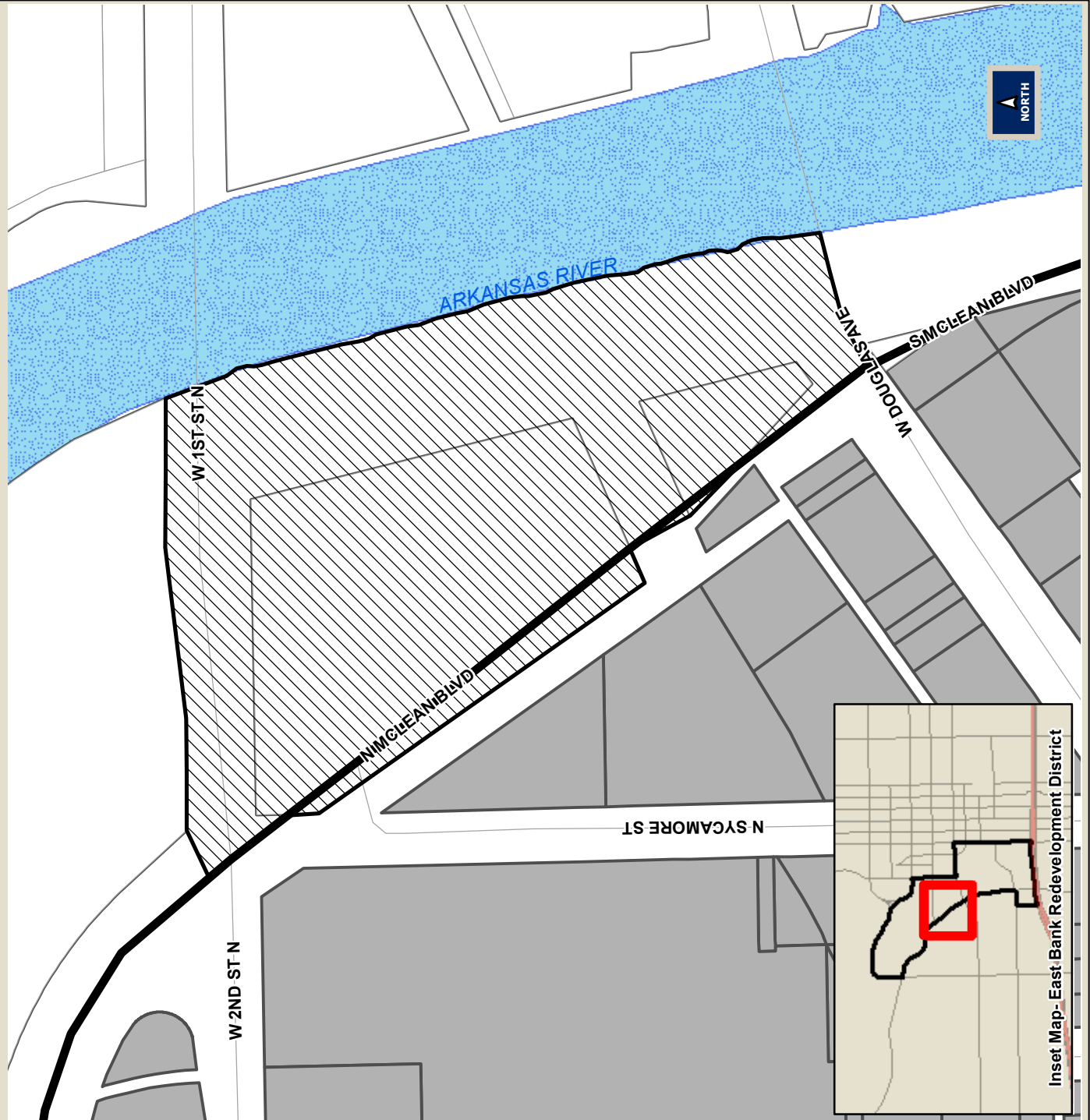
Proposed West Bank Apartments Project Area Map

City of Wichita, Kansas

-  East Bank Redevelopment District
-  Proposed West Bank Apartments Project Area
-  Property Parcels inside Redevelopment District
-  Property Parcels outside Redevelopment District

Software: ArcGIS 9.3.1
Hardware: Dell Xeon
Printer: HP 5000 Plotter
Map Data Source:
Property Parcels
provided by
Sedgwick County GIS,
Road Centerlines
provided by
City of Wichita

Monday, February 4, 2013, 3:58:16 PM
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It is understood that while the City of Wichita Data Center
Geographical Information Systems Department have to indicate
and reason to believe that there are inaccuracies in information
incorporated in the base map, the Data Center GIS per



Inset Map- East Bank Redevelopment District

Legal Description of the West Bank Apartments Redevelopment Project Area

All property located in Wichita, Sedgwick County, Kansas within the boundaries beginning at the intersection of the centerline of Douglas Avenue and the west right of way line of McLean Boulevard; thence north to the north right of way line of Second Street North; thence east to the west bank of the Arkansas River; thence south to the centerline of Douglas Avenue; thence west to the point of beginning; and including all street rights of way within such described area

Relocation Assistance Plan

RELOCATION ASSISTANCE PLAN

(K.S.A. 12-1777)

Assistance for the relocation of persons, families or businesses from property acquired in conjunction with the West Bank Apartments Project is not required. No persons or families will be displaced as a result of the Project and no tenants will be relocated other than within the Project boundaries.

Description of West Bank Apartments Project

East Bank Redevelopment District

DESCRIPTION OF PROPOSED WEST BANK APARTMENTS PROJECT

The West Bank Apartments Project consists of a mixed use development of the former West Bank stage property along the west side of the Arkansas River between Douglas Avenue and 2nd Street referred to as the “Project Area” (see attached district map). The property is currently owned by the City of Wichita and is located within the East Bank Redevelopment District.

West Bank Apartments

River Vista LLC will construct a 154-unit luxury apartment complex overlooking the west bank of the Arkansas River. Design of the apartments will incorporate views of the Arkansas River, Downtown and other river amenities. The development will include pedestrian walkway access to the River, bike paths and Delano Park. The apartment building will also include a boat and bike rental facility with access to the River and storage for rowing shells. Parking for tenants will be provided through structured parking and 134 parking stalls will be provided for the general public and guests. Construction is anticipated to begin in the first quarter of 2014 and be completed the second quarter of 2015. A two-story commercial building located along McLean Boulevard is planned as a second phase, based on market conditions.

Sitework and Infrastructure Improvements

Sitework

Sitework will include preparing the site for construction and for construction of on-site parking facilities. Landscape improvements and water features will be included to tie in the project with the river bank. The project will be designed to include pedestrian access through the project site to the riverbank, including a boathouse and/or boat launch facilities.

Infrastructure and Parking

The Project will include extensions and relocations of public utilities, sidewalks and pedestrian and vehicular ingress and egress to the site at a new intersection on McLean between Douglas and 2nd Streets. On-site surface and/or structured parking will be constructed. Additional public parking may be included along McLean.

Riverbank Improvements

Riverbank improvements will be included to complement the Broadview Hotel improvements on the east bank of the Arkansas River.

USE OF TAX INCREMENT FINANCING

The City of Wichita completed the legal steps necessary to establish the East Bank Redevelopment District pursuant to state laws (K.S.A. 12-1770 *et seq.*) in order to allow the use tax increment financing (“TIF”) to fund redevelopment projects, based on development agreements between the City and developers. Upon adoption of this project plan, the City will have established its authority under state law to issue general obligation bonds to finance TIF-eligible improvements, which bonds will be repaid from the incremental increase in property taxes resulting from the redevelopment of the Project Area. The TIF-funded improvements consist of the following:

- **Public improvements** – The City will undertake the construction of the site work and infrastructure and parking improvements listed above, at an estimated cost of \$2,500,000.
- **Total TIF-funded costs** -- \$2,500,000.

Metropolitan Area Planning Commission Resolution

RESOLUTION

A RESOLUTION OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION FINDING THAT THE CITY OF WICHITA, KANSAS REDEVELOPMENT PROJECT PLAN FOR THE WEST BANK APARTMENTS PROJECT AREA IS CONSISTENT WITH THE COMPREHENSIVE GENERAL PLAN FOR THE DEVELOPMENT OF THE CITY OF WICHITA, KANSAS.

WHEREAS, pursuant to K.S.A. 12-1770 *et. seq.*, as amended (the "Act") and Ordinance No.42-966 passed December 12, 1995, and published December 15, 1995, the City of Wichita (the "City"), established a redevelopment district pursuant to the Act, known as the East Bank Redevelopment District (the "District"); and

WHEREAS, by Ordinance No. 46-407, passed November 23, 2004, and published November 29, 2004, the City added certain property and increased the District boundaries pursuant to K.S.A. 12-1771(f) and made a substantial change to the District Plan for the District;

WHEREAS, the City proposes to undertake a Redevelopment Project within the District, consisting of site, infrastructure and parking improvements (the "Project") within a defined area of the District (the "Project Area") as set out in a proposed Redevelopment Project Plan for West Bank Apartments Project Area, dated August 22, 2013 (the "Project Plan") in accordance with the Act and is considering adoption of the Project Plan; and

WHEREAS, a relocation assistance plan under K.S.A. 12-1777 is not required in the Redevelopment Project Plan; and

WHEREAS, the Act provides that any city proposing to undertake a redevelopment project within a redevelopment district shall prepare a redevelopment project plan in consultation with the planning commission of such city; and

WHEREAS, the City's proposed Project Plan has been presented to and reviewed by the Wichita-Sedgwick County Metropolitan Area Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION:

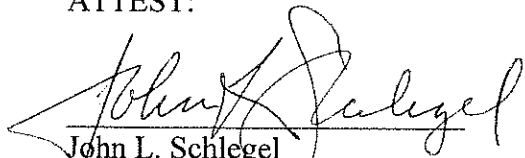
SECTION 1. It is hereby, after due consideration, found that the Redevelopment Project Plan for the West Bank Apartments Project Area is consistent with the intent of the comprehensive plan for the development of the City.

PASSED AND APPROVED by the Wichita-Sedgwick County Metropolitan Area Planning Commission, this 22nd day of August, 2013.

(Seal)


Chairman

ATTEST:


John L. Schlegel
Secretary, Wichita-Sedgwick County
Metropolitan Area Planning Commission

APPROVED AS TO FORM:


Gary E. Rebenstorf, City Attorney

DEVELOPMENT AGREEMENT

DATED AS OF OCTOBER 22, 2013

BETWEEN THE

CITY OF WICHITA, KANSAS,

AND

RIVER VISTA, L.L.C.

RELATING TO THE WEST BANK APARTMENTS PROJECT PLAN

FOR THE

EAST BANK REDEVELOPMENT DISTRICT

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Exhibit B	Project Site Plan, including Delano Park
Exhibit C	Public Infrastructure Improvements Description
Exhibit D	Project Budget
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Exhibit F	Restricted Land Uses in the District
Exhibit G	Certificate of Full Completion
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Exhibit I	Developer Guaranty
Exhibit J	Design Concept of Phase I and Phase II
Exhibit K	Legal Descriptions of Project Site and Delano Park

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), is dated as of October 22, 2013 by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **RIVER VISTA, L.L.C.**, a Kansas limited liability company (the “**Developer**”); collectively referred to as the “**Parties**” and each a “**Party**”).

RECITALS

A. On December 12, 1995, the Governing Body of the City (the “**Governing Body**”) approved Ordinance No. 42-966, which established a redevelopment district pursuant to K.S.A. § 12-1770 *et seq.*, as amended (the “**TIF Act**”), known as the East Bank District (as amended, the “**District**”), which is located within the City generally bounded on the north by First Street, on the east by Broadway Street, on the south by Kellogg Street and on the west by McLean Boulevard, as more specifically described therein.

B. On June 25, 2002 the Governing Body passed Ordinance No. 45-339 that removed certain property and reduced the boundaries of the District pursuant to the TIF Act.

C. On November 23, 2004 the Governing Body passed Ordinance No. 46-407 that added certain property and increased the boundaries of the District pursuant to the TIF Act and made a substantial change to the District Plan for the District.

D. The District Plan for the District provided that redevelopment of the District would be in several project areas within the District as set forth in separate redevelopment plans to be approved by the Governing Body of the City pursuant to the TIF Act.

E. On August 13, 2013 the Governing Body passed Ordinance No. 49-557, a non-substantial amendment to Ordinance No. 46-407 and the District Plan was made by attaching a map of the proposed project areas.

F. The City has prepared an additional redevelopment project plan for the West Bank Apartments Project Area (the “**Project Area**”), dated as of June 20, 2013 (the “**Project Plan**”), which includes, but is not limited to, the development and construction of public parking, street and signalization improvements and certain site and public improvements, all in conjunction with development of a 154 unit apartment complex and commercial structures by a private developer within the Project Area (collectively, the “**Project**”).

G. On August 22, 2013, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Project Plan and adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City.

H. Pursuant to the requirements of the TIF Act and Resolution No. 13-161, adopted August 27, 2013, the Governing Body set a public hearing to consider the adoption of the Project Plan on October 8, 2013 at 9:00 a.m. or as soon thereafter as the matter could be heard, at the City Council Chambers in City Hall, 455 N. Main, Wichita, Kansas and notice of such public hearing was provided as required by the Act.

I. On October 8, 2013, the public hearing was opened, public comment was received by the Governing Body and the public hearing was closed.

J. On October 22, 2013, the Governing Body by a vote of at least two-thirds of its members approved Ordinance No. 49-____, which approved the West Bank Apartments Project Plan.

K. The Parties now desire to enter into this Agreement to formalize their respective rights and obligations in regard to the Project.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01. Definitions of Words and Terms. Capitalized words used in this Agreement shall have the meanings set forth in the Recitals to this Agreement or they shall have the following meanings:

“Affiliate” shall mean a legal entity of which (i) at least 51% of the voting interest is controlled by one of the Parties or (ii) at least 51% of the ownership interest is controlled by one of the Parties.

“Agreement” means this Agreement as may be amended in accordance with the terms hereof.

“Certificate of Full Completion” means a certificate evidencing Full Completion of the Project, in substantially the form attached hereto as **Exhibit G**.

“City” means the City of Wichita, Kansas.

“City Representative” means the City Manager or his or her designee as evidenced by a written certificate furnished to the Developer containing the specimen signature of such person or persons and signed by the City Manager. The City Representative shall have full power and authority to implement decisions of the City Council and to act on behalf of the City in the exercise of its rights and responsibilities under this Agreement. The Developer may rely upon the decisions and directions of the City’s Representative as directions of the City; *provided, however*, the City Representative may at its election defer important approvals to the Governing Body.

“Claimant” shall have the meaning set forth in **Section 10.01**.

“Conditions Precedent” shall mean all of the conditions in **Section 2.03(B)**, unless waived by the Parties in writing.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

“Delano Park” shall mean the City park adjacent to the Project Site, as identified on **Exhibit B**.

“Developer” shall mean River Vista, L.L.C., a Kansas limited liability company, and its successors and assigns.

“Developer Guaranty” shall mean the guaranty to the City of the debt service on the TIF Bonds as described in **Section 4.06** by the Developer and the Guarantors.

“District” shall have the meaning set forth in Recital A.

“Event of Default” means any event or occurrence as defined in **Section 10.01**.

“Excusable Delays” means any delay beyond the reasonable control of the Party affected, caused by damage or destruction by fire or other casualty, power failure, strike, acts of war, shortage of materials, unavailability of labor, delays in the receipt of Permitted Subsequent Approvals as a result of unreasonable delay on the part of the applicable Governmental Authorities, adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or abnormal duration, tornadoes, and any other events or conditions, which shall include but not be limited to any litigation interfering with or delaying the construction of all or any portion of the Project in accordance with this Agreement, which in fact prevents the Party so affected from discharging its respective obligations hereunder.

“Governing Body” shall have the meaning set forth in Recital A.

“Governmental Approvals” means all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Project and consistent with the Project Plan, the Site Plan and this Agreement.

“Governmental Authorities” means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any type of any governmental unit (federal, state or local) whether now or hereafter in existence.

“Guarantors” means George E. Laham, II, William J. Warren, David E. Wells, and David C. Burk.

“Option to Purchase” means the option of the City to purchase the Phase II Lot in accordance with **Section 3.01(F)**.

“Parties” means the City and the Developer (with each referred to individually as a **“Party”**).

“Permitted Subsequent Approvals” shall mean the building permits and other Governmental Approvals customarily obtained prior to construction which have not been obtained on the date that this Agreement is executed, which the City or other governmental entity has not yet determined to grant.

“Phase I” shall have the meaning set forth in **Section 3.01**.

“Phase I Lot” shall mean the real property to be platted on which Phase I shall be constructed and which is legally described on **Exhibit K**.

“Phase II” shall mean the construction of an approximately 20,000 square foot mixed-use building on the Phase II Lot.

“Phase II Lot” shall mean the real property to be platted on which Phase II shall be constructed and which is legally described on **Exhibit K**.

“Phase II Lot Purchase Price” shall mean a purchase price calculated as a percentage of the square footage of the Phase II Lot compared to square footage of the Project Site, times the original purchase price of \$100,000 paid by Developer to City as said calculation may adjusted by applying the Consumer Price Index for the cumulative period from the initial sale by the City to the Developer to the date the City exercises its Option to Purchase.

“Preliminary Expenditures” shall mean those expenditures by the City or Developer with respect to the Project Plan, this Agreement and the Project Site.

“Project” shall mean redevelopment project described in the Project Plan, as amended, which includes Phase I, Phase II, the Public Infrastructure Improvements and the West River Bank Improvements.

“Project Budget” shall have the meaning set forth in **Section 4.02**.

“Project Plan” shall have the meaning set forth in Recital F.

“Project Site” shall mean the real property consisting of approximately 214,255 square feet located east of McLean Boulevard, south of 1st/2nd Street and west of the Arkansas River as generally shown on **Exhibit B** and as legally described on **Exhibit K**.

“Public Infrastructure Improvements” shall have the meaning set forth in **Section 3.01**.

“Sales Tax Revenues” means 100% of the incremental increase in revenue generated by the Project and received by the City from one-half of the gross receipts of the City under K.S.A. 12-187 *et seq.*, as amended, and K.S.A. 12-198, as amended, received through the last day of September, 2033 from the City's share of the retail sales and compensating use taxes of Sedgwick County, Kansas and any successor taxes thereto (currently 0.29%). within the District; all determined in accordance with the TIF Act and the Project Plan.

“Secretary” shall mean the Kansas Secretary of Commerce.

“Site Plan” shall have the meaning set forth in **Section 3.01**.

“STAR Bond Act” shall mean K.S.A. § 12-17,160 *et seq.*, as amended.

“STAR District” means the STAR Bond Project District of the City approved by Ordinance 49-208, which includes the Project Site.

“STAR Eligible Costs” shall mean “project costs” that are permitted under the STAR Bond Act and this Agreement.

“STAR Revenues” shall have the meaning set forth in **Section 4.03**.

“State” means the State of Kansas.

“State Sales Tax Revenues” means receipts of the State received and credited to the City Bond Finance Fund by the State Treasurer in accordance with K.S.A. 79-3620(d), as amended, from the tax imposed by K.S.A. 79-3603, as amended, and K.S.A. 79-3703, as amended, with respect to sales and compensating use within the STAR District.

“TIF Bonds” means the full faith and credit tax increment bonds to be issued by the City pursuant to the TIF Act to generate net proceeds of \$2,500,000 and any refunding bonds issued to refund such bonds.

“TIF Eligible Costs” shall mean the “redevelopment project costs” as defined in the TIF Act and approved in the Project Plan by the City and described in this Agreement.

“Vertical Development” shall mean the completion for the Phase II Lot of the following: (i) approved plans and specifications by the City for such Phase II Lot, (ii) issuance of a building permit by the City for such Phase II Lot, (iii) written evidence provided to the City of financing to construct the building(s) on such Phase II Lot, and (iv) construction of footings and foundation and all necessary site utilities on such Phase II Lot.

“West River Bank Improvements” shall mean certain pedestrian and bike pathways, landscaping, retaining wall, other amenities and corresponding utility location and/or relocation and the water well installation as described in **Section 7.01**, which are acceptable to the City and Developer and are approved by the Secretary.

Section 1.02. Rules of Construction. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction apply in construing the provisions of this Agreement:

1. The terms defined in this Section include the plural as well as the singular.
2. All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.
3. All references herein to “generally accepted accounting principles” refer to such principles in effect on the date of the determination, certification, computation or other action to be taken hereunder using or involving such terms.
4. All references in this instrument to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of this instrument as originally executed.
5. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision.
6. The Section headings herein are for convenience only and shall not affect the construction hereof.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations of City. The City makes the following representations and warranties, which are true and correct on the date hereof, to the best of the City’s knowledge:

A. **Due Authority.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No Litigation. Except for potential litigation based on the selection process of the Developer, there is no litigation, proceeding or investigation pending or, to the knowledge of the City, threatened against the City with respect to the Project Plan or this Agreement. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of the terms and provisions of this Agreement.

D. Governmental or Business Entity Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or business organization or corporate entity in connection with the execution and delivery by the City of this Agreement.

E. No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

Section 2.02. Representations of the Developer. The Developer makes the following representations and warranties, which are true and correct on the date hereof, to the best of the Developer's knowledge:

A. Due Authority. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No Litigation. Except for potential litigation based on the selection process of the Developer, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Project, the Developer or any officer, director, member or shareholder of the Developer. In addition, no litigation, proceeding or investigation is pending or, to the knowledge of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, of the terms and provisions of this Agreement.

D. No Material Change. (1) The Developer has not incurred any material liabilities or entered into any material transactions other than in the ordinary course of business except for the transactions contemplated by this Agreement and (2) there has been no material adverse change in the business, financial position, prospects or results of operations of the Developer, which could affect the Developer's ability to perform its obligations pursuant to this Agreement from that shown in the financial information provided by the Developer to the City prior to the execution of this Agreement.

E. Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement, other than Permitted Subsequent Approvals.

F. No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

G. Approvals. Except for Permitted Subsequent Approvals and as otherwise required by this Agreement, the Developer has received and is in good standing with respect to all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to conduct and to continue to conduct its business as heretofore conducted by it and to own or lease and operate its properties as now owned or leased by it. Except for Permitted Subsequent Approvals, the Developer has obtained all certificates, licenses, inspections, franchises, consents, immunities, permits, authorizations and approvals, governmental or otherwise, necessary to acquire, construct, equip, operate and maintain the Project. The Developer reasonably believes that all such certificates, licenses, consents, permits, authorizations or approvals which have not yet been obtained will be obtained in due course.

H. Construction Permits. Except for Permitted Subsequent Approvals, all governmental permits and licenses required by applicable law to construct, occupy and operate the Project have been issued and are in full force and effect or, if the present stage of development does not allow such issuance, the Developer reasonably believes, after due inquiry of the appropriate governmental officials, that such permits and licenses will be issued in a timely manner in order to permit the Project to be constructed.

I. Compliance with Laws. The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

J. Other Disclosures. The information furnished to the City by the Developer in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 2.03. Acquisition of Project Site.

A. Acquisition of Project Site by Developer. The Developer shall purchase the Project Site from the City for a purchase price of \$100,000. The City will convey title to Developer by a special warranty deed at closing. The Project Site shall be subject to the terms, conditions and covenants

contained in this Agreement and in the Project Plan immediately upon acquisition and prior to any encumbrances placed thereon.

B. Conditions Precedent for the Sale of Project Site to Developer. Upon the delivery to the City of each of following to the reasonable satisfaction of City, City shall sell the Project Site to the Developer:

1. This Agreement has been created and has become effective pursuant to **Section 2.04** hereof and a memorandum of this Agreement has been recorded as provided in accordance with **Section 11.15** hereof;
2. Zoning, platting, construction permit and all other permits required by City code for commencement of construction of Phase I;
3. Policies or certificate(s) of insurance evidencing that the Developer has procured all insurance required by this Agreement as set forth in **Section 9.02** hereof;
4. Evidence that the Developer's general contractor for construction of Phase I is a registered contractor in good standing under the laws of the state of Kansas and the laws of the state of its domicile;
5. Performance, labor and material payment bonds as required by the City's Charter Ordinance No. 203, dated September 19, 2006, for the Public Infrastructure Improvements and West Bank Improvements;
6. Executed copies of guaranteed maximum price construction contracts between the Developer and its general contractor for Phase I;
7. Evidence reasonably satisfactory to the City that the Developer has adequate financing to fully develop Phase I;
8. A critical path schedule and development budget for development and construction of Phase I, Public Infrastructure Improvements and the West River Bank Improvements as agreed upon by the City and the Developer;
9. STAR Bond Plan Amendment approved by the Governing Body of the City; and
10. Secretary of Commerce approval of the West River Bank Improvements as STAR Eligible Costs to be funded by STAR Revenues.

City, as owner of the Project Site, agrees to timely sign and file any applications or other documentation required to satisfy any of the foregoing conditions, which shall include, but not be limited to, zoning applications, plat documentation, and permit applications.

Section 2.04. Conditions to the Effective Date of this Agreement. Contemporaneously with the execution of this Agreement, and as a precondition to the effectiveness of this Agreement, the Developer shall submit the following documents to the City:

- A. A copy of the Developer's Articles of Organization, certified by the Secretary of State of the State of Kansas; and
- B. A certified copy of the Operating Agreement of the Developer;
- C. A list of each member of the Developer and their percentage ownership; and
- D. A legal opinion from counsel to the Developer in form and substance acceptable to the City covering: (i) the due organization of the Developer and the power and authority of the Developer to execute this Agreement, and (ii) the enforceability of this Agreement against the Developer; and
- E. A title commitment for the Project Site.

ARTICLE III

DEVELOPMENT OF THE PROJECT

Section 3.01. Scope of the Project.

A. Project Plan. As more fully described therein, the Project Plan contemplates the first phase of development in the Project (collectively, “**Phase I**”), which will consist of an approximately 154-unit apartment complex, related parking and an approximately 4,000 square foot boathouse facility, a boat and bike rental facility of approximately 2,200 square feet and approximately 2,200 square feet of meeting space which will be made available to Wichita Festivals, Inc., Wichita Rowing Club, Wichita State University Rowing, other groups and/or tenants of the apartment complex, plus certain street improvements and signalization as described on Exhibit C (the “**Public Infrastructure Improvements**”) plus the West River Bank Improvements. A site plan generally depicting the improvements to be constructed as the Project is attached hereto as Exhibit B (the “**Site Plan**”).

B. Development of Phase I. The Parties hereby agree to construct Phase I in a manner generally consistent with the Project Plan, and in accordance with the Site Plan, subject to the provisions of this Agreement.

C. Phase I Development Responsibilities. The responsibilities of the Parties in regard to Phase I shall be as follows:

1. Responsibilities of the City. The City shall select the designer for the West River Bank Improvements and the City estimates that the preliminary design work for the West River Bank Improvements will be completed by November 1, 2013. The City shall require that the fee charged by the designer is competitive and reasonable based on the marketplace.

When requested by the Developer, the City will provide development assistance to the Developer by facilitating and expediting the issuance of building permits and compliance with other City controlled requirements relating to the construction and completion of the Project.

The City will provide reasonable access to the Developer for staging and work areas on Delano Park and the real property owned by the City across McLean to the West upon execution and delivery of a satisfactory indemnity agreement from the Developer to the City related to the use of such property. Developer agrees to return such staging and work areas to their prior condition upon completion of Phase I.

2. Responsibilities of the Developer. The Developer shall cause the balance of Phase I design and development to occur, including: (i) the Public Infrastructure Improvements, (ii) the 154-unit apartment complex, (iii) approximately 4,000 square foot boathouse facility; (iv) approximately 2,200 square foot meeting room, and (v) approximately 2,200 square feet of boat and bike rental space. The Parties acknowledge that the Developer’s responsibilities hereunder may be undertaken by Affiliates of the Developer or third parties. The Parties further acknowledge that the nature and size of the improvements constructed may deviate from those provided herein to the extent they remain reasonably consistent with the commercial nature of the uses contemplated under the Project Plan.

The Developer shall cause the Project Site, Delano Park and public right-of-way to be platted in accordance with the Governmental Approvals and shall be responsible for the civil engineering fees to

survey and plat such lots, as well as the application fee(s) for the same. Such plat shall contain separate lots for the Phase I Lot, Phase II Lot and Delano Park as shown on **Exhibit B**. Dedicated public access to and from public areas in the Phase I Lot and Phase II Lot and the Arkansas River will be the subject of a plat restriction, recorded easement, or both as agreed to by the City and the Developer. The access across the Phase I and Phase II Lots may be reasonably restricted as to location and hours.

D. Phase I Development Schedule. The Parties hereby agree that the construction of Phase I shall be undertaken in accordance with the following schedule:

1. Construction of the Public Infrastructure Improvements and West River Bank Improvements by Developer shall commence no later than 60 days after the Conditions Precedent are satisfied and the Developer shall diligently complete construction thereof after construction commences, subject to circumstances as set forth in **Section 10.07**.

2. Construction of the balance of Phase I shall commence by Developer within 180 days of completion of (i) construction of the retaining walls along the property lines of the Phase I Lot, (ii) site work, including soil removal is substantially completed, and (iii) completion of utility relocation and/or installation shall be completed, subject to circumstances as set forth in **Section 10.07**.

3. Developer agrees to complete Phase I, the West River Bank Improvements and the Public Infrastructure Improvements within 24 months of commencement, subject to circumstances as set forth in **Section 10.07**.

4. Upon commencement of construction of Phase I and continuing until the Certificate of Full Completion for Phase I is filed and accepted by the City, Developer will provide the City Representative monthly written reports on the status of construction and completion of the West River Bank Improvements, the Public Infrastructure Improvements and the Phase I Project.

E. Phase II Development. The Developer shall develop Phase II as market conditions allow.

F. City's Option to Purchase Phase II Lot.

1. If no Vertical Development has occurred on the Phase II Lot within fifteen (15) years after satisfaction of the Conditions Precedent, City may purchase the Phase II Lot for the Phase II Lot Purchase Price and with no encumbrances or mortgages in place on such Phase II Lot, except for such encumbrances which are reasonable and proper for the purposes of a multi-phased lot development, including but not limited to all reasonable easements and restrictive covenants. The City agrees that any easements and restrictive covenants recorded against the Phase II Lot as of the date of the Developer's purchase of such lot, as well as the access easements referred to in Section 3.01(C)(2), shall be deemed to be reasonable and proper. The 15-year period may be extended by the City for two additional 5-year periods if the Developer provides information satisfactory to the City that economic conditions prohibit the economically sustainable development of Phase II.

2. City's Option to Purchase shall be evidenced by an option to purchase executed between the City and Developer at the closing of the Project Site, which shall be recorded simultaneously with the closing of the sale of the Project Site against the Phase II Lot. No less than 60 days prior to the expiration of the 15-year period, as may be extended as set in in paragraph 1 above, the City shall provide written notice to Developer of the City's exercise of the Option to Purchase, in which case closing on the purchase of the Phase II Lot shall occur within 30 days after the expiration of the 15-year period and any extensions.

3. City shall release its Option to Purchase attached to the Phase II Lot upon Vertical Development of Phase II.

G. Standards for Improvements. Any improvements made under the Project Plan completed by the Developer shall be in conformance with approved plans for such improvements, City building codes, City ordinances and all other applicable rules and regulations. Before commencement of construction or development of any buildings, structures or other work or improvement, the Developer, as applicable, shall obtain any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

H. Public Infrastructure Improvements. All Public Infrastructure Improvements shall be constructed by Developer subject to City's standard review and permitting procedures and pursuant to the provisions of **Exhibit H** attached hereto and incorporated herein. All contracts and subcontracts for the construction of the Public Infrastructure Improvements shall be competitively bid by Developer and the City shall have access to all such bidding documentation. The Developer shall provide to the City the statutory bonds and performance bonds required by the City for the Public Infrastructure Improvements. All plans and specifications for the Public Infrastructure Improvements shall be approved by the City Engineer.

I. West River Bank Improvements. All West Bank River Improvements shall be constructed by Developer subject to City's standard review and permitting procedures and pursuant to the provisions of **Exhibit H** attached hereto and incorporated herein. All contracts and subcontracts for the construction of the West Bank River Improvements shall be competitively bid by Developer and the City shall have access to all such bidding documentation. The Developer shall provide to the City the statutory bonds and performance bonds required by the City for the West Bank River Improvements. All plans and specifications for the West Bank River Improvements shall be approved by the City Engineer. The City, the Developer and the Secretary must agree on a mutually satisfactory budget for the West Bank Improvements, which is currently estimated at \$2,500,000.

Section 3.02. Project Budget. The Project shall be constructed substantially in accordance with the Project Budget attached as **Exhibit D** hereto. Developer shall have the right to transfer costs between and among the line items within the Project Budget, provided that (1) the figure for total TIF Eligible Costs does not change and (2) the City Representative approves in writing all such changes and transfers greater than 10% for any line item within the Project Budget.

Section 3.03. Project Zoning, Planning, Platting and Construction.

A. Conformance with Project Plan. The Project shall be developed, and the Project constructed, in accordance with this Agreement and the Project Plan submitted by the Developer and approved by the City. No "substantial changes," as defined in the TIF Act, shall be made to the Project, except as may be mutually agreed upon, in writing, between the Developer and the City, it being the intent of the Parties that the layout and size of particular buildings, parking facilities and private drives will likely change through the planning, zoning and marketing process. Any "substantial changes" shall be made only in accordance with the TIF Act.

B. Zoning, Planning and Platting. The City agrees to consider and act on any zoning, planning and platting applications by the Developer in due course and good faith. City and Developer both acknowledge that planning and platting are subject to change and City agrees to review any and all changes to planning and/or platting in due course.

C. Phase I and Phase II Design. Developer shall select the designer for all aspects of the Phase I and Phase II Project and site preparation, soil removal, if necessary and the Public Infrastructure Improvements, which design concept shall be acceptable to the City in its reasonable discretion. City has approved the design concept of Phase I and Phase II which was included in Developer's RFP submittal, which design concept is attached hereto as **Exhibit J**.

D. Construction Plans. The Developer and the City, as to their respective portions of the Project, shall submit Construction Plans for the Project for review and approval pursuant to the Wichita/Sedgwick Unified Building and Trade Code. Construction Plans may be submitted in phases or stages. The Construction Plans shall be in sufficient completeness and detail to show that construction will be in conformance with the Project Plan and this Agreement. The Developer agrees that all construction, improvement, equipping, and installation work on the Project shall be done in accordance with the Construction Plans, the Site Plan, the Project Plan, and this Agreement.

E. Construction Permits and Approvals. Before commencement of construction or development of any buildings, structures or other work or improvements, the Developer shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work. Such permits and approvals may be obtained by Developer in phases corresponding to particular stages of construction. The City shall cooperate with and provide all usual assistance to the Developer, as to their respective portions of the Project, in securing these permits and approvals, and shall diligently process, review and consider all such permits and approvals as may be required by law; except provided that the City shall not be required to issue any such permits or approval for any portion of the Project not in conformance with the Project Plan or this Agreement.

F. Development Schedule. The Developer shall commence construction of the Project in good and workmanlike manner in accordance with the terms of this Agreement. The Developer shall cause their respective portions of the Project to be completed with due diligence. Upon reasonable advance notice, the Developer shall meet with the City to review and discuss the design and construction of their respective portions of the Project in order to enable the City to monitor the status of construction and to determine that their respective portions of the Project is being performed and completed in accordance with this Agreement.

G. Continuation and Completion. Subject to Excusable Delays, once the Developer has commenced construction of the Project, the Developer shall not permit cessation of work on the Project for a period in excess of 45 consecutive days or 90 days in the aggregate without prior written consent of the City.

H. No Waiver. Nothing in this Agreement shall constitute a waiver of the City's right to consider and approve or deny Governmental Approvals pursuant to the City's regulatory authority as provided by City's Unified Building Code and applicable state law. The Developer acknowledges that satisfaction of certain conditions contained in this Agreement require the reasonable exercise of the City's discretionary zoning authority by the City's Metropolitan Area Planning Commission and Governing Body in accordance with City's Zoning Ordinance and Unified Building Code and applicable state law.

Section 3.04. Rights of Access. Representatives of the City shall have the right of access to the Project, without charges or fees, at normal construction hours during the period of construction, for the purpose of ensuring compliance with this Agreement, including, but not limited to, the inspection of the work being performed in constructing, renovating, improving, equipping, repairing and installing the Project, so long as they comply with all safety rules. Except in case of emergency, prior to any such access, such representatives of the City will check in with the on-site manager. Such representatives of

the City shall carry proper identification, shall insure their own safety, assuming the risk of injury, and shall not interfere with the construction activity.

Section 3.05. Certificate of Full Completion. Promptly after completion of the Project in accordance with the provisions of this Agreement, the Developer shall submit a Certificate of Full Completion to the City. Full Completion shall mean that the Developer or its successor or assigns shall have been granted a Certificate of Occupancy by the City Building Official and shall have completed all work as required by the Project Plan with respect to the applicable phase of the Project. The Certificate of Full Completion shall be in substantially the form attached as **Exhibit G**. The City shall, within ten (10) days following delivery of the Certificate of Full Completion, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in the Certificate of Full Completion. The City's execution of the Certificate of Full Completion shall constitute evidence of the satisfaction of the Developer's agreements and covenants to construct the applicable phase of the Project to which the Certificate of Full Completion relates.

Section 3.06. Dedication of Right-of Way and Easements. Developer agrees to dedicate to the City without any charge or cost all necessary right-of-way and easements within or adjacent to the Project Site for the construction of the Public Infrastructure Improvements and West River Bank Improvements.

ARTICLE IV

PROJECT FINANCING

Section 4.01. Sources of Funding. The Parties contemplate that Phase I may be financed by the following sources of funds, subject to the terms of this Agreement: (i) costs incurred and financed by the Developer with private debt and equity, (ii) TIF Bond proceeds in the amount of \$2,500,000, and (iii) STAR Revenues or other available City funds in anticipation of STAR Revenues that provide net proceeds in an amount necessary to fund the West Bank Improvements.

Developer represents and warrants to the City that it has the financial capacity to obtain the necessary private financing for the Project.

Section 4.02. Phase I Budget. A budget of the projected costs of Phase I is attached hereto as **Exhibit D** (the "Project Budget"); provided, however, that the Project Budget does not include an amount for the West Bank Improvements, as the parties acknowledge and agree that such amount cannot be determined until there is an agreed-upon design for such improvements.

Section 4.03. STAR Revenues. The Parties acknowledge that the City will request that the Secretary approve the use of STAR Revenues in the estimated amount of \$2,500,000 to fund the West River Bank Improvements (the "**STAR Revenues**"). The City is currently pursuing, and shall continue to diligently pursue, all necessary approvals for the Governing Body to approve an amendment of the STAR Bond Plan. If the approval by the Secretary is not obtained within a reasonable period, then the City and Developer shall negotiate in good faith to amend this Agreement. If the Parties cannot agree on a satisfactory amendment of this Agreement within 120 days after receipt of the Secretary letter not approving such amendment, then this Agreement shall terminate and the Parties shall execute a satisfactory termination of this Agreement and release the recorded version of this Agreement.

Each disbursement of the STAR Revenues to fund West River Bank Improvements must be approved in writing by the City Representative.

Section 4.04. TIF Bonds. The City agrees to issue TIF Bonds, subject to the provisions and restrictions of the TIF Act, in a principal amount to provide net proceeds of not to exceed \$2,500,000 for payment of Public Infrastructure Improvements and Preliminary Expenditures that are eligible “redevelopment project costs” as said term is defined in the TIF Act. Prior to the issuance of the TIF Bonds, the Developer shall deliver to the City (1) the executed Developer Guaranty, (2) an opinion of counsel to the Developer that the Developer Guaranty has been validly authorized, duly executed and is enforceable against the Developer and (3) a resolution of the members of Developer approving the Developer Guaranty.

Until the Conditions Precedent have been satisfied, the City and the Developer shall each be responsible for payment of their respective Preliminary Expenditures.

Section 4.05. Industrial Revenue Bonds. The City agrees to issue a letter of intent to Developer for the issuance of industrial revenue bonds (“IRBs”) for purposes of obtaining a sales tax exemption on construction materials for Phase I, such letter of intent to be subject to the standard policies and procedures of the City, plus the following additional requirements: (1) IRBs must be purchased either by Developer or its lender in a direct placement; and (2) no property tax exemption will be requested for property financed with the IRBs.

Section 4.06. Developer Guaranty. The Developer agrees to execute and deliver and to cause the Guarantors to execute and deliver to the City, the Developer Guaranty in substantially the form attached hereto as **Exhibit I.**

ARTICLE V

STAR REVENUES AND TIF BONDS

Section 5.01. Compliance with the STAR Bond Act and TIF Act. The Parties hereby agree that they will comply with the STAR Bond Act and the TIF Act.

Section 5.02. Certification of Expenditures. Prior to the disbursement of any STAR Revenues or TIF Bond Proceeds, the Developer shall certify any STAR Eligible Costs or TIF Eligible Costs for which it intends to utilize STAR Revenues or TIF Bond proceeds in accordance with the following:

1. The Developer shall submit to the City a Certification of Expenditures in the form attached hereto as **Exhibit E** setting forth the amount for which payment is sought and an itemized listing of the related STAR Eligible Costs or TIF Eligible Costs.
2. Each Certification of Expenditures shall be accompanied by such bills, contracts, invoices, and other evidence as the City shall reasonably require to document appropriate payment.

Section 5.03. Payment of Expenditures. The City shall have twenty (20) calendar days after receipt of any Certification of Expenditures to review and respond by written notice to the Developer. If the submitted documentation demonstrates that: (1) the Certification of Expenditures shows payment or pending payment by the Developer of the STAR Eligible Costs or TIF Eligible Costs; (2) the expense was incurred or will immediately be incurred upon the disbursement of the funds; (3) the aggregate amount of STAR Eligible Costs or TIF Eligible Costs theretofore paid or encumbered pursuant to this Agreement is less than the amounts set forth in this Agreement for reimbursement and if added to the amount of the Certification of Expenditures, would not exceed such amounts; (4) a detailed description of the STAR

Eligible Costs or TIF Eligible Costs, which is tied to the line item(s) in the Project Budget; (5) the Developer is not in material default under this Agreement; and (6) there is no fraud on the part of the Developer, then the City shall approve the Certification of Expenditures and promptly reimburse the Developer for the STAR Eligible Costs or TIF Eligible Costs pursuant to the terms of this Agreement. If the City reasonably disapproves of the Certification of Expenditures, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period.

ARTICLE VI

USE OF THE DISTRICT

Section 6.01. Land Use Restrictions. At all times while this Agreement is in effect the types of land uses and retailers set forth in **Exhibit F** hereto are prohibited within the Project Site, unless approved in writing by the City prior to the execution of a letter of intent, lease or prior to the sale of land. In addition, the City agrees that Delano Park shall not be used for anything other than a park without the Developer's written consent. The Parties agree to file such restrictions of record upon request of the Party benefitted by such restriction.

Section 6.02. Operation of Project. The Project shall comply with all applicable building and zoning, health, environmental and safety codes and laws and all other applicable laws, rules and regulations. The Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City and any other governmental agency having jurisdiction for the construction and operation of the Project, including but not limited to obtaining all necessary rental licenses and paying any necessary fees to obtain required permits and licenses.

Section 6.03. Sales Tax Information.

A. The Developer shall provide the City Representative written notice of all current commercial tenants located on property owned by the Developer within the Project Site within 10 days of the opening or closing for business of any business within the Project on property owned by the Developer within the Project Site, and at all other times upon the written request of the City Representative.

B. The Developer agrees to make commercially reasonable efforts to cause all assignees, purchasers, commercial tenants, commercial subtenants or any other entity acquiring property or commercial occupancy rights in the Project Area to be obligated by written contract (lease agreement or other enforceable document) to provide to the City Representative simultaneously with submission to the Kansas Department of Revenue the monthly sales tax returns for their facilities in the Project Area. The Developer hereby agrees that each such lease agreement shall provide that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such tenant or purchaser.

C. To the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3657.

Section 6.04. Taxes, Assessments, Encumbrances and Liens.

A. So long as the Developer owns real property within the Project Area, the Developer shall pay when due all real estate taxes and assessments related to such property. Nothing herein shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax or assessment,

encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer shall promptly notify the City in writing of its protest of real estate taxes or valuation of property within the Project Area.

B. Subject to **Section 6.05**, Developer agrees that no mechanics' or other liens shall be established or remain against the Public Infrastructure Improvements or the West River Bank Improvements, or the funds in connection with any of the Public Infrastructure Improvements or the West River Bank Improvements, for labor or materials furnished in connection with any acquisition, construction, additions, modifications, improvements, repairs, renewals or replacements so made. However, the Developer shall not be in default if mechanics' or other liens are filed or established and the Developer contests in good faith said mechanics' liens and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Developer hereby agrees and covenants to indemnify and hold harmless the City in the event any liens are filed against the Public Infrastructure Improvements or the West River Bank Improvements as a result of acts of the Developer, its agents or independent contractors.

Section 6.05. Financing During Construction; Rights of Holders.

A. No Encumbrances Except Mortgages during Construction. Notwithstanding any other provision of this Agreement, mortgages are permitted for the acquisition, construction, renovation, improvement, equipping, repair and installation of the Project and to secure permanent financing thereafter. However, nothing contained in this paragraph is intended to permit or require the subordination of general property taxes, special assessments or any other statutorily authorized governmental lien to be subordinate in the priority of payment to such mortgages.

B. Holder Not Obligated to Construct Improvements. The holder of any mortgage authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the deed for the District be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the District to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

C. Notice of Default to Mortgage Holders; Right to Cure. With respect to any mortgage granted by Developer as provided herein, whenever the City shall deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Project, the City shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, but only if City has been requested to do so in writing by Developer. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to and with the City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, that portion of the Project to which the lien or title of such holder relate, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

D. The restrictions on Developer financing in this Section are intended to and shall apply only to financing during the construction period for the improvements and any financing obtained in connection therewith.

Section 6.06. Covenant for Non-Discrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, disability, national origin or ancestry in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project.

The covenant established in this Section shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns and any successor in interest to the Project or any part thereof. The covenants contained in this Section shall remain for so long as this Agreement is in effect.

ARTICLE VII

MAINTENANCE OF THE PROJECT

Section 7.01. Maintenance of the Public Infrastructure Improvements. Developer agrees to provide at its cost and expense for maintenance of those portions of the Public Infrastructure Improvements located on the Phase I Lot and Phase II Lot in a first class condition and appearance.

The City agrees to provide at its cost and expense for maintenance of those portions of the Public Infrastructure Improvements not located on the Phase I Lot and Phase II Lot and located in the public right of way adjacent thereto, such as street and traffic signalization, in the manner for similar improvements in other areas of the City.

City acknowledges that Developer intends to drill and install one or more wells for irrigation of the landscaping included on the Phase I Lot and the Phase II Lot, the West River Bank Improvements and Delano Park. City further acknowledges that, due to the requirements and restrictions of the Kansas Water Appropriations Act, the well(s) to be used for irrigation of the West River Bank Improvements and Delano Park will need to be located on City-owned property. City agrees to support Developer's application for the well(s) to be installed on the Phase I Lot and/or Phase II Lot and agrees to file all such applications for the well(s) to be installed within Delano Park and/or the West River Bank.

Section 7.02. Maintenance of the West River Bank Improvements.

The City agrees to provide at its cost and expense for maintenance of the hardscape portion of the West River Bank Improvements, and hardscape improvements in Delano Park in the manner for similar improvements in other areas of the City.

The Developer agrees at its cost and expense to pay the costs of irrigation, maintenance and replacement of all landscaping in the public right of way and for non-hardscape improvement for the West River Bank Improvements, at a quality level equal to the surrounding property.

Section 7.03. Maintenance of Delano Park. Developer agrees to provide for irrigation, maintenance and replacement of all landscaping and non-hardscape improvements located in Delano

Park; provided that City shall reimburse Developer for such costs, subject to the following conditions: (1) Developer shall provide City with an annual estimate of such costs prior to March 1 of each year; (2) City shall include within its adopted budget an amount for such expenses; and (3) the City's obligation for such expenses shall be subject to the cash-basis and budget laws of the state of Kansas. The Developer and City shall each have an option to eliminate this provision on March 1 occurring three years after completion of the Phase I Project and every 3 years thereafter; provided written notice is given to the other party 6 months in advance of the appropriate March 1.

Section 7.04. Termination of the Project Plan. The City shall not terminate the Project Plan prior to the expiration of its twenty year term, except as provided by law, or as requested by the Developer after the TIF Bonds have been paid in full. Upon payment in full of the TIF Bonds, this Agreement shall automatically terminate and be of no further force and effect; provided, however, the City's Option to Purchase the Phase II Lot and the maintenance provisions contained in this Article VII shall not be affected by the termination of this Agreement and shall remain in full force and effect.

ARTICLE VIII

ASSIGNMENT; TRANSFER

Section 8.01. Transfer of Obligations.

A. The rights, duties and obligations hereunder of the Developer may be assigned, in whole or in part, to another entity or individual without the prior approval of the City Representative, City Governing Body, or any other entity or individual; *provided, however*, that in the event Developer assigns any of its obligations originating from this Agreement, such assignment shall not release Developer from those obligations unless such entity or individual assumes such obligations and the Governing Body consents to such assignment and assumption. Developer may not assign its right to reimbursement from State Sales Tax Revenues or TIF Bonds without prior approval by the Governing Body, which shall not be unreasonably withheld, conditioned, or delayed.

B. The Parties contemplate that the portions of the District may be owned by or transferred to third parties and no purchaser or tenant of any part of the District shall be bound by any obligation of the Developer solely by virtue of being a purchaser or tenant whose interest arose from the Developer; provided, however, that no transferee or owner of property within the District except the Developer shall be entitled to any rights whatsoever or claim upon the State Sales Tax Revenues or TIF Bonds as set forth herein, except as specifically authorized in writing by the Developer.

C. The foregoing restrictions on assignment, transfer and conveyance shall not apply to (a) any security interest granted to secure indebtedness to any construction or permanent lender, or (b) the sale, rental and leasing of portions of the District for the uses permitted under the terms of this Agreement or (c) the assignment, transfer or conveyance by a Party to its Affiliate.

Section 8.02. Corporate Reorganization. Nothing herein shall prohibit (or require City approval to allow) the Developer from forming additional development or ownership entities to replace or joint venture with the Developer for the purpose of business and/or income tax planning; provided that such entity is an Affiliate of Developer as defined by this Agreement.

ARTICLE IX

GENERAL COVENANTS

Section 9.01. Indemnification of City.

A. Developer agrees to indemnify and hold the City, its employees, agents and independent contractors and consultants (collectively, the **“City Indemnified Parties”**) harmless from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and reasonable attorneys’ fees, resulting from, arising out of, or in any way connected with:

1. the Developer’s actions and undertaking in implementation of the Project Plan or this Agreement;
2. the negligence or willful misconduct of Developer, its employees, agents or independent contractors and consultants in connection with the management, design, development, redevelopment and construction of the Project; and
3. any delay or expense resulting from any litigation filed against the Developer by any member or shareholder of the Developer, any prospective investor, prospective partner or joint venture partner, lender, co-proposer, architect, contractor, consultant or other vendor.

This section shall not apply to willful misconduct or negligence of the City or its officers, employees or agents. This section includes, but is not limited to, any repair, cleanup, remediation, detoxification, or preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in (i) the Comprehensive Environmental Response, Compensation and Liability Act (**“CERCLA”**; 42 U.S.C. Section 9601, et seq.), (ii) the Resource Conservation and Recovery Act (**“RCRA”**; 42 U.S.C. Section 6901 et seq.) and (iii) Article 34, Chapter 65, K.S.A. and all amendments thereto, at any place where Developer owns or has control of real property pursuant to any of Developer’s activities under this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107 (e) of CERCLA to assure, protect, hold harmless and indemnify City from liability.

B. In the event any suit, action, investigation, claim or proceeding (collectively, an **“Action”**) is begun or made as a result of which the Developer, City, and/or Developer may become obligated to one or more of the City Indemnified Parties or Developer Indemnified Parties hereunder, any one of the City Indemnified Parties or Developer Indemnified Parties shall give prompt notice to the Developer, Developer or City, as applicable, of the occurrence of such event.

C. The rights to indemnification set forth in this Agreement shall survive the termination of this Agreement.

Section 9.02. Insurance.

A. As used in this Section, **“Replacement Value”** means an amount sufficient to prevent the application of any co-insurance contribution on any loss but in no event less than 100% of the actual

replacement cost of Phase I, including additional administrative or managerial costs that may be incurred to effect the repairs or reconstruction, but excluding costs of excavation, foundation and footings.

B. The Developer shall comply with the insurance requirements set forth in this Section unless the Developer requests approval of substitute insurance requirements, based on insurance required by one or more lenders to Developer, and the City approves such request in writing. The Developer shall keep the Project continuously insured against such risks and in such amounts, with such deductible provisions as are customary in connection with the operation of facilities of the type and size comparable to the Project. The Developer, at the Developer's sole expense, shall carry and maintain or cause to be carried and maintained, and pay or cause to be paid in a timely manner the premiums for at least the following insurance with respect to the Project (unless the requirement therefore shall be waived by the City in writing):

1. Builder's completed value risk insurance and, on and after the completion date of the Project, property insurance, in each case (a) providing coverage during the construction of the Project for financial losses of the Developer relating to continuing expenses, caused by property damage during the construction of the Project, (b) providing coverage (including increased costs from changes in building laws, demolition costs and replacement cost coverage) for those risks which is equal or broader than that currently covered by an all-risk policy covering all improvements, fixtures and equipment in the Project, (c) containing an agreed amount endorsement with a waiver of all co-insurance provisions, (d) providing for no deductible in excess of \$500,000 (as increased each year by the increase in the CPI, if any, for the preceding calendar year) for all such insurance coverage, and (e) covering, without limitation, loss, including, but not limited to, the following:

- (a) fire,
- (b) extended coverage perils,
- (c) vandalism and malicious mischief,
- (d) water damage,
- (e) debris removal,
- (f) collapse, and
- (g) comprehensive boiler and machinery insurance,

in each case on a replacement cost basis in an amount equal to the Project's Replacement Value; and

2. Commercial general liability insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form), including at least the following hazards: (a) premises and operations; (b) products and completed operations; (c) independent contractors; and (d) blanket contractual liability for all legal contracts; such insurance (x) to be on an "occurrence" form with a combined limit of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence, and (y) with excess coverage of not less than Replacement Value;

3. Workers' compensation insurance, with statutorily required coverage.

Section 9.03. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for the reimbursement of the Project Costs or for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any

such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

ARTICLE X

DEFAULTS AND REMEDIES

Section 10.01. Defaults - General. Subject to the extensions of time set forth in **Section 10.07** below (Enforced Delay), failure or delay by any Party to perform any material term or provision of this Agreement, after receiving written notice thereof and failing to cure as set forth in **Section 10.02** below, and the breach of a representation and/or warranty of a Party each constitutes an “**Event of Default**” under this Agreement. The Party claiming a default (“**Claimant**”) shall give written notice of default to the defaulting Party, specifying the nature of the default.

Section 10.02. Default Proceedings. The Claimant shall not institute proceedings against a defaulting Party, nor be entitled to damages or to pursue any of the remedies set forth in Section 10.03 if the defaulting Party within fourteen (14) days from receipt of the written notice of default set forth in **Section 10.01**, commences with due diligence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice; or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

Section 10.03. Remedies on Default. Whenever any Event of Default by the City shall have occurred and be continuing, subject to applicable cure periods, the Developer may pursue any remedy at law and in equity, except as provided below, and provided the City’s sole source of payment of any monetary damages under this Agreement shall be expressly limited to the special revenues of the City described in this Agreement.

Whenever any Event of Default by the Developer shall have occurred and be continuing, subject to applicable cure periods, the City may (1) pursue any remedy at law and in equity, except as provided below, and/or (2) refuse to approve any further Certificates of Expenditures, make any disbursements until such Event of Default is cured by the Developer. If two or more Events of Default by the Developer occur and continue beyond applicable cure periods, within a successive 12-month period, the City shall, in addition to the remedies set forth in the preceding sentence, have the option to terminate this Agreement and withhold any disbursements.

Notwithstanding any other provision of this Agreement to the contrary, in no event shall the Developer or the City ever be liable for any punitive, special, incidental, or consequential damages in connection with this Agreement, or otherwise. For the purposes of this Section, consequential damages shall include, but not be limited to, lost profits, lost tax revenue, or other similar losses which are not direct out-of-pocket costs incurred by any non-defaulting Party.

Notwithstanding any other provision of this Article, if Developer is in default, as defined above, of its obligation in this Agreement to complete construction of the Project, City may enforce said obligation by demanding specific performance of Developer’s obligation.

If a Party has instituted any proceeding to enforce any right or remedy under this Agreement by suit or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Party seeking to enforce the right or remedy, then and in every case the Parties shall, subject to any determination in such proceeding, be restored to their former positions and

rights hereunder, and thereafter all rights and remedies of the Parties shall continue as though no such proceeding had been instituted.

The exercise by a Party of any one remedy shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by a Party shall apply to obligations beyond those expressly waived.

Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or limit it in any way. No waiver in fact made by a Party of any specific default by another Party shall be considered or treated as a waiver of the rights with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

Section 10.04. Legal Actions.

1. Institution of Legal Actions. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Sedgwick County, Kansas or, if federal jurisdiction exists, in the Federal District Court in the District of Kansas.

2. Applicable Law. The laws of the State of Kansas shall govern the interpretation and enforcement of this Agreement.

3. Acceptance of Service of Process.

a. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Clerk or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer or shall be made by personal service upon the registered agent of the Developer and shall be valid whether made within or without the State of Kansas or in such other manner as may be provided by law. In the event the Developer no longer has a registered agent to serve, the Secretary of State is hereby irrevocably appointed to accept service for the Developer.

Section 10.05. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

Section 10.06. Inaction Not a Waiver of Default. Any failures or delays by a Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such Party of its right to institute and maintain any action or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 10.07. Enforced Delay; Extension of Times of Performance In addition to specific provisions of this Agreement, performance by a Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the Party seeking the extension has acted diligently and delays or defaults are due to delay or default of the other Party, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public

enemy, epidemics, market conditions, quarantine restrictions, freight embargoes, lack of transportation, or unusually severe weather, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Developer.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Mutual Assistance. The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

Section 11.02. Effect of Violation of the Terms and Provisions of this Agreement; No Partnership. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the District. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. Nothing contained herein shall be construed as creating a partnership between the Developer and the City.

Section 11.03. Time of Essence. Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 11.04. Amendments. This Agreement may be amended only by the mutual consent of the Parties, by the adoption of a resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the Parties or their successors in interest.

Section 11.05. Agreement Controls. The Parties agree that the Project Plan will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of Project Costs and all other methods of implementing the Project Plan. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the Project Plan and that expand upon the estimated and anticipated sources and uses of funds to implement the Project Plan. Nothing in this Agreement shall be deemed an amendment of the Project Plan. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

Section 11.06. Conflicts of Interest.

A. No member of the City's governing body or of any branch of the City's government that has any power of review or approval of any of the Developer's undertakings shall participate in any decisions relating thereto which affect such person's personal interest or the interests of any corporation

or partnership in which such person is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City the nature of such interest and seek a determination with respect to such interest by the City and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

B. The Developer warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement. The Developer further represents that, to its best knowledge and belief, no officer, employee or agent of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision making process or gain insider information with regard to the Project, has or will have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.07. Term. Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect, unless mutually terminated earlier by the Parties, for twenty (20) years from the date of approval of the Project Plan.

Section 11.08. Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 11.09. Required Disclosures. Each Party shall immediately notify the other Party of the occurrence of any material event which would cause any of the information furnished to the other Party in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

Section 11.10. Tax Implications. The Developer acknowledge and represent that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

Section 11.11. Authorized Parties. Whenever under the provisions of this Agreement and other related documents, instruments or any supplemental agreement, a request, demand, approval, notice or consent of the City or the Developer is required, or the City or the Developer is required to agree or to take some action at the request of the other Party, such approval or such consent or such request shall be given for the City, unless otherwise provided herein, by the City Representative and for the Developer by any officer of Developer so authorized; and any person shall be authorized to act on any such agreement, request, demand, approval, notice or consent or other action and neither Party shall have any complaint against the other as a result of any such action taken. The City Representative may seek the advice, consent or approval of the City Council before providing any supplemental agreement, request, demand, approval, notice or consent for the City pursuant to this Section.

Section 11.12. Notice. All notices and requests required pursuant to this Agreement shall be sent as follows:

To the City:

City Manager
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

With a copy to:

City Clerk
City Hall, 13th Floor
455 N. Main
Wichita, Kansas 67202

and

Joe Norton
Gilmore & Bell, P.C.
100 North Main Street, Suite 800
Wichita, Kansas 67202-1311

To the Developer:

River Vista, L.L.C.
c/o Laham Development
Attention: Chief Operating Officer
150 N. Market
Wichita, KS 67202

or at such other addresses as the Parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 11.13. Kansas Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 11.14. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 11.15. Recordation of Agreement. The Parties agree to execute and deliver a mutually agreed upon Memorandum of this Agreement and a Memorandum of Option to Purchase as necessary to put the public on notice of the City's rights under this Agreement and the Option to Purchase. Such Memorandums shall be in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Sedgwick County, Kansas.

Section 11.16. Consent or Approval. Except as otherwise provided in this Agreement, whenever the consent, approval or acceptance of either Party is required hereunder, such consent, approval or acceptance shall not be unreasonably withheld, conditioned or unduly delayed and such approval shall be provided within forty-five (45) days of receipt of request for such approval.

Section 11.17. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 11.18. No Other Agreement. Except as otherwise expressly provided herein, this Agreement and all documents incorporated herein by reference supersede all prior agreements, negotiations and discussions, both written and oral, relative to the Project and is a full integration of the agreement of the Parties.

Section 11.19. Survivorship. Notwithstanding the termination of this Agreement, the Developer's obligations set out in **Section 9.01** shall survive the termination of this Agreement.

Section 11.20. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

Section 11.21. Cash Basis and Budget Laws. The Parties acknowledge and agree that the ability of the City to enter into and perform certain financial obligations pursuant to this Agreement are subject to the K.S.A. 10-1101 *et seq.* and K.S.A. 79-2935 *et seq.*

[Signatures on Following Pages]

IN WITNESS WHEREOF, the City and the Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney

DEVELOPER:

**RIVER VISTA, L.L.C.,
a Kansas limited liability company**

By: _____
Amy J. Liebau, President

Exhibit A – Ordinance No. 49-

[see attached]

Exhibit B – Project Site Plan

EXHIBIT B
Project Site Plan, including Delano Park

W. 1ST STREET N.

ARKANSAS RIVER

P.O.B.

P.O.B.

Phase
II

14,280 square feet
or 0.327 acres +/-

Phase I

207,609 square feet
or 4.766 acres +/-

MCLEAN BLVD.

P.O.B.

Park

14,280 square feet
or 0.327 acres +/-

W. DOUGLAS AVE.



1"=100'



0' 50' 100'

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RIVER VISTA PROJECT PARCELS
SITE MAP

PROJECT NO. 1301020636		DATE: OCTOBER 2013		SHEET NO. 1 OF 2
DRAWN BY: JGD	DESIGNED BY: BDL	APPROVED BY: BDL		

LEGAL DESCRIPTIONS

Phase I

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet to the POINT OF BEGINNING; thence N81°20'49"E, 166.96 feet to a point on a curve to the right having a radius of 628.08 feet, a central angle of 8°45'22", and a long chord of 95.89 feet, bearing N84°43'30"E; thence 95.99 feet along said curve; thence N89°06'11"E, 109.02 feet to a point on a non-tangent curve to the right; said non-tangent curve to the right having a radius of 119.86 feet, a central angle of 39°58'20", a chord bearing of S35°18'53"E, and a chord distance of 81.93 feet, thence along the said non-tangent curve to the right 83.62 feet; thence N66°21'55"E, 8.77 feet; thence S13°38'05"E, 501.06 feet; thence S06°44'34"E, 50.00 feet; thence S81°51'23"W, 124.81 feet; thence S67°14'59"W, 71.00 feet; thence N37°31'46"W, 326.80 feet; thence N52°28'14"E, 85.00 feet; thence N37°31'46"W, 168.00 feet; thence S52°28'14"W, 85.00 feet; thence N37°31'46"W, 170.20 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 207,609 square feet or 4.766 acres of land, more or less.

Phase II

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet; thence S28°50'21"W, 93.67 feet; thence S37°31'46"E, 170.20 feet to the POINT OF BEGINNING; thence N52°28'14"E, 85.00 feet; thence S37°31'46"E, 168.00 feet; thence S52°28'14"W, 85.00 feet; thence N37°31'46"W, 168.00 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 14,280 square feet or 0.327 acres of land, more or less.

Park

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet; thence S28°50'21"W, 93.67 feet thence S37°31'46"E, 665.00 feet to the POINT OF BEGINNING; thence N67°14'59"E, 71.00 feet; thence N81°51'23"E, 124.81 feet; thence S13°38'05"E, 239.09 feet; thence S76°21'55"W, 26.32 feet; thence S29°46'54"W, 16.97 feet; thence S74°46'54"W, 24.14 feet; thence N71°22'26"W, 33.22 feet; thence N37°31'46"W, 257.08 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 35,411 square feet or 0.812 acres of land, more or less..


<div>©2013 MKEC Engineering All Rights Reserved www.mkec.com These drawings and their contents, including, but not limited to, all concepts, designs, & ideas are the exclusive property of MKEC Engineering (MKEC), and may not be used or reproduced in any way without the express consent of MKEC.</div>	<div> MKEC Wichita, KS • 316.684.9600</div>	RIVER VISTA PROJECT PARCELS LEGAL DESCRIPTIONS		
		PROJECT NO. 1301020636	DATE: OCTOBER 2013	SHEET NO. 2 OF 2
		DRAWN BY: JGD	DESIGNED BY: JGD APPROVED BY: BDL	

Exhibit C – Public Infrastructure Improvements Description

Parking Structure/Ramp
Parking/Streets
Controlled Intersection
Utilities
Storm Sewer Relocation
Landscape/Sprinkler
Sidewalks
Miscellaneous related to the foregoing

Exhibit D – Project Budget

**River Vista, LLC
West Bank Apartments**

Project cost

	Sq Ft/ Number	Cost Per	Construction Cost
Land Value	214,255	\$ -	\$ 450,000
Construction - Apartments	165,636	\$ 92	15,238,512
Walkways	31,300	\$ 10	313,000
Swimming Pool/Spa			250,000
Decks	154	\$ 160	246,400
Elevators	3	\$ 100,800	302,400
Bridges	3	\$ 30,000	90,000
Clubhouse	3,000	\$ 145	435,000
Boathouse/Banquet	3,000	\$ 100	300,000
Boat Storage	7,000	\$ 55	385,000
Parking Structure/Ramp	200	\$ 5,200	1,040,000
Security/Leasing/FF&E/Exercise			200,000
Boats/Bikes			50,000
Architect		2.50%	439,008
Engineering			100,000
Parking/Streets			340,380
Controlled Intersection			300,000
Utilities			150,000
Storm Sewer Relocation			104,000
Landscape/Sprinkler			150,000
Sidewalks			59,571
Application Fees			19,000
Appraisal			5,000
Closing			40,000
Taxes and Insurance			20,000
Development			512,000
River Bank Development ²			
City Reserve			200,000
Interest During Const.			408,102
Legal and Accounting			35,000
Miscellaneous			17,627
Total Project Costs			\$ 22,200,000
Loan Amount			\$ 13,000,000
City (TIF) ¹			2,400,000
Investors			6,450,000
Land Value			350,000
Total Required			\$ 22,200,000
¹ TIF calculation			
Fees		\$	56,813
Parking Structure/Ramp			1,040,000
Parking/Streets			340,380
Controlled Intersection			300,000
Utilities			150,000
Storm Sewer Relocation			104,000
Landscape/Sprinkler			150,000
Sidewalks			59,571
Miscellaneous			199,236
Total			\$ 2,400,000
² STAR Bonds		\$	2,500,000

Proforma

	Sq Ft	No. of Units	Monthly Rent	Annual Rent
One Bedroom Units	960	85	\$ 1,000	\$ 1,020,000
Two Bedroom (Loft) Units	1,450	18	\$ 1,400	302,400
Two Bedroom Units	1,136	51	\$ 1,200	734,400
Parking		95	\$ 30	34,200
Housing			\$ 2,000	24,000
Boat Storage			\$ 200	2,400
Room Rental			\$ 500	6,000
Total Base Rent				\$ 2,123,400
Less:				
Vacancy			10.00%	\$ 212,340
Admin	Per Unit		\$ 775	119,350
Payroll	Per Unit		\$ 984	151,536
Repairs & Maintenance	Per Unit		\$ 272	41,888
Utilities & Security	Per Unit		\$ 630	97,020
Landscape & Snow Removal	Per Unit		\$ 300	46,200
Taxes				205,000
Insurance				50,000
Total Expenses				\$ 923,334
Net Operating Income				\$ 1,200,066
Less: Debt Service				790,429
Cash Flow				\$ 409,637
<u>Capitalization Structure</u>				
Loan Amount			\$	13,000,000
Investor Equity			\$	6,450,000
Loan to Value				75.83%
Debt Coverage Ratio				1.52
Interest Rate				4.50%
Amortization				30
Cash Return				6.35%
Cap Rate For Value				7.00%
Value			\$	17,143,800

Exhibit E – Certification of Expenditures Form

Request No. _____

Date: _____

Pursuant to the Development Agreement (the “Agreement”) for the West Bank Apartments Project Plan between the City of Wichita, Kansas and the undersigned (the “Developer”), the Developer requests a reimbursement and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Agreement.
3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.
4. These costs have been incurred and are reasonable costs that are reimbursable under the Agreement and are identified on the attached updated Project Budget by line item.
5. Each item listed above has not been previously reimbursed and no part thereof has been included in any other Certification of Expenditures or other disbursement request previously filed with the City.
6. Each item listed on *Schedule I* hereto is a Project Cost and was incurred in connection with the construction of the Project after _____, 20____.
7. These Project Costs have been paid by the Developer and are reimbursable under the Agreement.
8. Each item listed on *Schedule I* has not previously been paid or reimbursed and no part thereof has been included in any other certificate previously filed with the City.
9. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
10. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.
11. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
12. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.

13. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

RIVER VISTA, L.L.C.

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

**ATTACHMENT I
TO CERTIFICATION OF EXPENDITURES**

REQUEST NO. _____

DATED _____

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the costs of issuance for which the Obligation to be reimbursed was incurred
---	----------------------------	---

Exhibit F – Restricted Land Uses in the District

1. Adult Book and Video Stores
2. Community Correctional Facilities
3. Half-way Houses
4. Drug or Alcohol Rehabilitation Facilities
5. Used Car Lots
6. Multi-game, Casino-style Gambling Facilities
7. Commercial Billboards

Exhibit G – Certificate of Full Completion

FORM OF CERTIFICATE OF FULL COMPLETION

*Pursuant to **Section 3.05** of the Agreement, the City shall, within ten (10) days following delivery of this Certificate, carry out such inspections as it deems necessary to verify to its reasonable satisfaction the accuracy of the certifications contained in this Certificate.*

CERTIFICATE OF FULL COMPLETION

The undersigned, River Vista, L.L.C. (the “**Developer**”), pursuant to that certain Development Agreement dated as of _____, 2013, between the **City of Wichita, Kansas** (the “**City**”) and the Developer (the “**Agreement**”), hereby certifies to the City as follows:

1. That as of _____, 20____, the construction, renovation, repairing, equipping and constructing of the Project (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Project has been completed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).
3. Lien waivers for applicable portions of the Project have been obtained, or, to the extent that a good faith dispute exists with respect to the payment of any construction cost with respect to the Project, Developer has provided the City with a bond or other security reasonably acceptable to the City.
4. This Certificate of Full Completion is accompanied by (a) the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein), certifying that the Project has been substantially completed in accordance with the Agreement; and (b) a copy of the Certificate(s) of Occupancy issued by the City Building Official with respect to each building to be constructed within the Project.
5. This Certificate of Full Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Project.
6. The City’s acceptance and the recordation of this Certificate with the Sedgwick County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to construct the Project.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20_____.

DEVELOPER:

**RIVER VISTA, L.L.C.,
a Kansas limited liability company**

By: _____
Amy J. Liebau, President

ACCEPTED:

CITY OF WICHITA, KANSAS

By: _____

Name: _____

Title: _____

(Insert Notary Form(s) and Legal Description)

Exhibit H
City Policy on Construction of Public Infrastructure Improvements by Private Contract

[See Attached]

Construction of Infrastructure Improvements by Private Contract



Overview

This information applies to all infrastructure improvements constructed under private contract in public easement, public right-of-way, and/or private property including water lines, stormwater/drainage systems, sanitary sewer, and paving improvements.

Prior to commencement of construction, the following must be submitted to and approved by the City Engineer:

- Engineered plans
- Plan Review Fee
- Recorded easements
- Electronic .dwg and .pdf files of signed, approved plans for sanitary, drainage and paving projects.
- Electronic .dwg and .pdf files and mylars of signed, approved plans for water projects
- Bonds (Statutory & Performance and Maintenance)

At the completion of construction, the following must be submitted to the City Engineer:

- Final Record Plans in pdf format and mylars for the water projects.
- Inspection Logs
- Test Documentation
- TV Tapes and/or Water Quality Test
- Valve and Fire Hydrant manufacturers and models, and pipe certifications.

Owner/Developer Responsibilities

The Owner is responsible for hiring a Consultant Engineer and a Contractor, and responsible for seeing that the Engineer and Contractor fulfill the requirements of this policy.

Consultant Responsibilities

Engineered Plans

The Consultant Engineer needs to furnish complete plans to the City. All plans need to be certified by a professional engineer licensed in the state of Kansas. Final water plans need to be on 22"x36" Mylar for approval signatures. Final Sanitary and Drainage plans can be on media chosen by the Consultant for approval signatures. Elec-

tronic .dwg and .pdf files need to be submitted along with the final plans. The Signature Block, standard detail sheets, and sample sets of plans are available in AutoCAD format on Engineering's FTP site in the Private Project Templates and Details sections at <http://detailsur-D24447yf@Files3.cyberlink.net>

Water Line Projects:

Plans are required for any line publicly maintained, any domestic service line over 2", and any fire protection line, from the tap to the building and/or furthest hydrant. Profile is required for the entire fire protection line, but only for the public portion of a domestic service line. Upon approval, 2 11x17 signed copies and the signed mylar plans shall be submitted to the City Engineer's Office along with .dwg and .pdf files.

Sanitary Sewer Projects:

Plans (plan and profile) are required for any publicly maintained line, and any private sewer line 8" or larger. Upon approval, .dwg and .pdf files need to be submitted to the City Engineer's office. The .pdf files should be made from the signed set of plans.

Stormwater/Drainage Projects:

Developments that require stormwater management facilities, detention ponds, downstream channel protection, water quality treatment, and/or storm sewers shall submit a (ppd) plan. For information on the plan submittal process and possible permit application see the city web site at <http://www.wichita.gov/stormwater> under the Regulatory & Permit Documents tab. Stormwater permit applications shall be submitted with all supporting documentation to the Public Works & Utilities Engineering Division, with reviews taking place by both Stormwater Management & Engineering staff. Submit two sets of half-scale plans.

Plans (plan and profile) are required for publicly maintained line, as well as private line 12" or larger. Upon approval, electronic copies of all stormwater permit application documentation and .dwg and .pdf files of the plans shall be submitted to the City Engineer's office.

Paving Projects:

Plans are required for any street that is to be publicly maintained. Upon approval, .dwg and .pdf files need to be submitted to the City Engineer's office. The .pdf files should be made from the signed set of plans.

Plan Review Fee

This fee reimburses the City for the costs of plan review, recording, final inspection, and administration of the project. The Consultant Engineer submits it to the City Engineer's Office along with preliminary plans. It is based on the project size according to

the following fee schedule:

Water, Sewer and Drainage	
100' or less	\$150
100' - 500'	\$250
500' - 1000'	\$350
Over 1000'	\$0.35 per foot
Paving	
100' or less	\$250
100' - 500'	\$375
500' - 1000'	\$500
Over 1000'	\$0.50 per foot

Checks should be made out to *City of Wichita* and submitted to the City Engineer along with preliminary plans.

Recorded Easements

Easements are to be recorded at Sedgwick County Courthouse and the original is to be provided to the City Engineer prior to approval of the Final Plans.

Inspection Arrangements

All Private Projects must be inspected and certified by a professional engineering firm, with a professional engineer licensed in the state of Kansas, with the exception of water line taps and valve operations, which are performed by City staff. Inspection arrangements are the responsibility of the Consultant Engineer, but it may be delegated to the Contractor to make arrangements. Inspection services shall be performed in accordance with the City of Wichita Standard Specifications available on the City's website in the Public Works section.

Testing

The Consultant Engineer (or the designated inspecting firm) shall perform all inspection and testing services (including televising and air testing of sewers) and shall document and provide the City satisfactory documentation of all such activities.

Final Record Drawings

The Consultant Engineer (or the designated inspecting firm) shall document construction with Final Record drawings. Final Record (as-built) information may be added to the original .pdf or signed Mylar plans. Add information including the size, make, and reading of all meters. One .pdf (plus mylar for water) of Final Record plans shall be submitted along with the following number of 11x17 copies:

Water Lines	1
Sanitary Sewers	3
Stormwater/Drainage	1
Paving	1

When the Final Record drawings are submitted, the City Engineer's Inspector will perform a field check of all visible items.

Project Completion

Upon completion of a field check, the City Engineer will issue either a Certificate of Acceptance or a Defect Notice. Once the City Engineer has been notified that defects have been corrected, another field check will be performed. Warranties shall begin on the date the City issues the Certificate of Acceptance.

Contractor Responsibilities

Bonds

Bonds are filed by the Contractor on the 11th floor of the County Courthouse with City of Wichita Bond Forms.

The **Performance and Maintenance Bond** is required for 100% of the cost of the improvements in public right-of-way or easements, through and including the water vault, if applicable. The Performance Bond guarantees to the City the performance of the work as provided in the plans and specifications. The Maintenance provision is limited to 15% of the cost of the improvements. The Maintenance Bond guarantees to the City the correction of any defect on material or workmanship, latent in character, and not discernible at the time of final acceptance, and guarantees against any damage to such improvements by reason of settling of the ground base or foundation thereof.

The **Statutory Bond** is required for 100% of the cost of the improvement in public right-of-way or easements, through and including the water vault, if applicable. This bond guarantees to the State of Kansas the payment of all materials, labor, machinery, and damage to property or persons. This bond must be filed with the Clerk of the District Court in the Sedgwick County Courthouse (\$36.00 filing fee made out to *Clerk of the District Court*) and the original receipt must be submitted to the City Engineer. KSA 60-1111 should be referenced somewhere on the bond.

Notification

The Contractor shall notify the Consultant Engineer and all property owners and/or tenants within 500 feet of the furthest extents of the project at least ten (10) working days prior to construction. Contractor shall notify affected property owners of any disruption of service at least 2 days in advance.

Water Taps

All "wet" taps on Public Mains shall be completed by Public Works & Utilities staff. No tap on the City main will be made until final plans have been approved and all bonding requirements are met. The current Fee Schedule is available on the City's website in the Water Utilities, Customer Service section.

Construction

The Contractor must have a signed set of plans on site during construction. Fire protection lines must be installed by a licensed Fire Sprinkler Contractor.

Street Cut Permits

For private construction projects that require cutting a street, curb, drive approach, or sidewalk, the Contractor will need to get a Street Cut Permit. The pavement will need to be replaced by the City's Contractor. Contact Linda Firsching at 268-4418 for Street Cut Permits and unit prices for pavement replacement.

Contacts:

Central Inspection Site Plans Examiner:
Paul Hays 268-4663

Tap Fees/Approved Materials:
Bryan Smith 268-4555

Water Line Plan Review:
Tim Davidson 268-4455

Sanitary/Drainage/Paving Plan Review:
Julianne Kallman 268-4236

Stormwater Management:
Scott Lindebak 268-4498
Tim Davidson 268-4498

Bonding Requirements/Field Inspections:
Tom Mason 268-4574

Street Cut Permits:
Linda Firsching 268-4418

Engineering's FTP Site Administrator:
Andy Smith 268-4275

Fire Department - Cpt. Schowalter 268-4441
Fire Department - Chief Bob Thompson 268-4441

www.wichita.gov
May 2011

Prepared and Printed by:
Department of Public Works & Utilities
Engineering Division



Construction of Infrastructure Improvements By Private Contract

Water
•
Sanitary Sewer
•
Stormwater/Drainage
•
Paving

Exhibit I –Developer Guaranty

[See Attached]

GUARANTY AGREEMENT

BETWEEN

RIVER VISTA, L.L.C.,

GEORGE E. LAHAM, II,

WILLIAM J. WARREN,

DAVID E. WELLS,

AND

DAVID C. BURK

AS GUARANTORS

AND

THE CITY OF WICHITA, KANSAS

DATED AS OF _____, 2013

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT dated as of _____, 2013 (the “**Guaranty Agreement**”), by and between RIVER VISTA, L.L.C., a Kansas limited liability company, GEORGE E. LAHAM, II, WILLIAM J. WARREN, DAVID E. WELLS and DAVID C. BURK (collectively and individually, the “**Guarantor**”) and the City of Wichita (the “**City**”).

WITNESSETH:

WHEREAS, the City, an incorporated city of the first class, duly organized and existing under the laws of the State of Kansas (the “**State**”), intends to issue general obligation tax increment bonds with net bond proceeds of \$2,500,000 (the “**TIF Bonds**”) to assist River Vista, L.L.C. in development and financing of a project in the City pursuant to a Development Agreement dated as of October 22, 2013 between River Vista, L.L.C. and the City (the “**Development Agreement**”); and

WHEREAS, as a condition of issuing the TIF Bonds and as required by the Development Agreement, on the basis hereinabove summarized, the City has required the Guarantor and the Guarantor has agreed to furnish a financial guarantee for the full and prompt payment of all principal and interest payments as scheduled on the TIF Bonds, when and as the same shall become due and in accordance with the terms and conditions of the TIF Bonds.

NOW, THEREFORE, in consideration of the foregoing, the Guarantor does hereby covenant and agree with the City as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES

Section 1.1. Representations and Warranties of the Guarantor. Each Guarantor represents and warrants to the City as follows:

- (a) *Financial Benefit.* The execution of this Guaranty and the assumption by each Guarantor of its obligations hereunder will result in a direct financial benefit to it.
- (b) *No Litigation.* No litigation, proceedings or investigations are pending or, to the knowledge of each Guarantor, threatened against the Guarantor which would in any manner challenge or adversely affect powers of each Guarantor to enter into and carry out the transactions described in or contemplated by this Guaranty or the execution, delivery, validity or performance by each Guarantor of the terms and provisions of this Guaranty.

Section 1.2. Survival of Representations. All representations of each Guarantor contained in this Guaranty or in any certificate or other instrument delivered by each Guarantor pursuant to this Guaranty, shall survive the execution and delivery thereof.

ARTICLE II
THE GUARANTY

Section 2.1. Guaranty. Each Guarantor, jointly and severally, unconditionally guarantees to the City the following:

A. The full and prompt payment of all principal and interest payments as scheduled for the TIF Bonds, when and as the same shall become due and in accordance with the terms and conditions of the TIF Bonds; provided, however, that Guarantors' liability for such payments shall be limited to the amount by which such payments exceed the tax increment (as defined in the TIF Act) paid to Sedgwick County and distributed to the City for the Phase I Lot and the Phase II Lot (as those terms are defined in the Development Agreement) during the term of the Development Agreement.

B. The full and prompt payment of the costs and expenses of any proceedings relating to the enforcement of any provision of this Guaranty and the reasonable fees, expenses, disbursements and advances of the City, its agents and counsel; and

Section 2.2. Payments on Guaranty.

A. All payments by each Guarantor shall be paid in lawful money of the United States of America. Any default in the provisions hereof shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action rises.

B. It is understood that extensions of time of payment or modifications or renewals of any of the obligations of any Guarantor hereunder shall not in any way impair the liability of the undersigned to City and that the undersigned will keep informed as to all matters pertaining to this Guaranty without notice from City.

C. When any of the obligations guaranteed in this Guaranty shall be and remain due and unperformed or unpaid, the undersigned will, upon demand, cause the performance or payment of such obligations.

D. Before proceeding hereunder against the undersigned, resort need not be made by City to any other security for any or all of the guaranteed obligations, nor shall the City be required to exhaust any remedy against any other endorser, surety or guarantor of the obligations.

E. Notice of the making, renewing or extending time of payment of any of the guaranteed obligations, and of demand, protest, and notice of nonpayment thereof, and notice of acceptance hereof, are expressly waived. No substitution, release or death of any other party liable for the payment of any of such obligations shall affect the liability of the undersigned to City. A waiver by the City of any right or remedy on any one or more occasions shall not be construed as a bar to or a waiver of any such right or remedy on future occasions.

F. The undersigned agree that, if at any time all or any part of any payment previously applied by City on any of the guaranteed obligations must be returned by the City for any reason, whether by court order, administrative order, or settlement, the undersigned shall remain liable for the full amount returned as if such amount had never been received by City, notwithstanding any termination of this Guaranty or the cancellation of any agreement evidencing the guaranteed obligations.

G. River Vista, L.L.C. agrees to, no more than once per twelve (12) month period, allow the designated City Representative to review, but not retain any copies of, its financial statements at a mutually agreeable time and place but only after said City Representative has entered into a binding Non-Disclosure Agreement. The terms of the Non-Disclosure Agreement shall allow an exception from its provisions for discussion with City Management and Legal staff, and for further disclosure as needed for enforcement or collection due to material default, should the anticipated review disclose information that would call for the same. If the City desires to review the financial statements of any of the other Guarantors, it shall, at its sole cost and expense, contract with Springsted Incorporated to review such financial information and provide *summary* information to the City. The City acknowledges and agrees that the Guarantors will only provide financial information to Springsted for review upon execution of a mutually agreeable Non-Disclosure Agreement.

H. Each of the undersigned has unconditionally delivered this Guaranty to City and failure to sign this or any other guaranty by any other person shall not discharge the liability of the signer of this Guaranty.

I. This Guaranty shall be governed by, and construed in accordance with, the laws of Kansas, shall inure to the benefit of City, its successors and assigns, and shall be binding upon the undersigned and the heirs, executors, administrators, successors and assigns of the undersigned.

J. Each Guarantor waives diligence, presentment, demand of payment, and filing of claims with a court in the event of receivership or bankruptcy of any Guarantor, protest or notice and all demands whatsoever.

[THE BALANCE OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Each Guarantor has executed this Guaranty as of the date first above written.

**RIVER VISTA, L.L.C.,
a Kansas limited liability company**

By: _____
Amy J. Liebau, President

Name: George E. Laham, II

Name: William J. Warren

Name: David E. Wells

Name: David C. Burk

ACCEPTANCE OF CITY

This Guaranty Agreement and the obligations undertaken in it by the Guarantor are hereby accepted by the City as of the date first above written.

THE CITY OF WICHITA, KANSAS

By: _____

Name: Carl Brewer

Title: Mayor

Exhibit J – Design Concept of Phase I and Phase II

[See Attached]

EXHIBIT J
Design Concept of Phase I and Phase II

W. 1ST STREET N.

ARKANSAS RIVER

MCLEAN BLVD.

W. DOUGLAS AVE.

P.O.B.

P.O.B.

P.O.B.

Phase II

14,280 square feet
or 0.327 acres +/-

Phase I

207,609 square feet
or 4.766 acres +/-

Park

14,280 square feet
or 0.327 acres +/-



NORTH

1"=100'



0' 50' 100'

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the express consent of MKEC.



MKEC

Wichita, KS • 316.684.9600

RIVER VISTA PROJECT PARCELS
SITE MAP

PROJECT NO. 1301020636

DATE: OCTOBER 2013

SHEET NO.

DRAWN BY: JGD

DESIGNED BY: BDL

APPROVED BY: BDL

1 OF 2

EXHIBIT J
Design Concept of Phase I and Phase II



VIEW LOOKING WEST

EXHIBIT J
Design Concept of Phase I and Phase II



WEST ELEVATION OF APARTMENTS



SPANGENBERG PHILLIPS TICE
121 N. MEAD, SUITE 201, WICHITA, KS 67202
TEL: 316-267-4002 FAX: 316-267-1000



River Vista
RESIDENCES

Exhibit K – Legal Descriptions of Project Site and Delano Park

Phase I Lot

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet to the POINT OF BEGINNING; thence N81°20'49"E, 166.96 feet to a point on a curve to the right having a radius of 628.08 feet, a central angle of 8°45'22", and a long chord of 95.89 feet, bearing N84°43'30"E; thence 95.99 feet along said curve; thence N89°06'11"E, 109.02 feet to a point on a non-tangent curve to the right; said non-tangent curve to the right having a radius of 119.86 feet, a central angle of 39°58'20", a chord bearing of S35°18'53"E, and a chord distance of 81.93 feet, thence along the said non-tangent curve to the right 83.62 feet; thence N66°21'55"E, 8.77 feet; thence S13°38'05"E, 501.06 feet; thence S06°44'34"E, 50.00 feet; thence S81°51'23"W, 124.81 feet; thence S67°14'59"W, 71.00 feet; thence N37°31'46"W, 326.80 feet; thence N52°28'14"E, 85.00 feet; thence N37°31'46"W, 168.00 feet; thence S52°28'14"W, 85.00 feet; thence N37°31'46"W, 170.20 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 207,609 square feet or 4.766 acres of land, more or less.

Phase II Lot

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet; thence S28°50'21"W, 93.67 feet; thence S37°31'46"E, 170.20 feet to the POINT OF BEGINNING; thence N52°28'14"E, 85.00 feet; thence S37°31'46"E, 168.00 feet; thence S52°28'14"W, 85.00 feet; thence N37°31'46"W, 168.00 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 14,280 square feet or 0.327 acres of land, more or less.

Delano Park

An unplatted tract of land lying in the Southwest Quarter of Section 20, Township 27 South, Range 1 East of the Sixth Principal Meridian, Wichita, Sedgwick County, Kansas, being more particularly described as follows:

COMMENCING at the northwest corner of said Southwest Quarter; thence N01°13'23"W, 2.69 feet along the west line of the Northwest Quarter of said Section 20; thence along the centerline of 2nd Street North on a Kansas coordinate system of 1983 south zone bearing of N88°56'32"E, 1050.21 feet; thence N88°58'25"E, 888.30 feet along said centerline; thence S01°01'35"E, 43.38 feet; thence S28°50'21"W, 93.67 feet thence S37°31'46"E, 665.00 feet to the POINT OF BEGINNING; thence N67°14'59"E, 71.00 feet; thence N81°51'23"E, 124.81 feet; thence S13°38'05"E, 239.09 feet; thence S76°21'55"W, 26.32 feet; thence S29°46'54"W, 16.97 feet; thence S74°46'54"W, 24.14 feet; thence N71°22'26"W, 33.22 feet; thence N37°31'46"W, 257.08 feet to the POINT OF BEGINNING.

Said tract CONTAINS: 35,411 square feet or 0.812 acres of land, more or less.

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Approval of the Development Agreement for the Exchange Place Project
(District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Approve first reading of the home rule ordinance authorizing the execution of the Development Agreement and the issuance of bonds.

Background: On May 8, 2007, the City Council adopted an ordinance establishing a redevelopment district in the area between English Street, First Street North, Broadway Avenue and Main Street, for the purpose of allowing the use of tax increment financing (“TIF”) to pay a portion of the costs of constructing redevelopment projects in that area. On July 24, 2007, the City Council adopted the Exchange Place Project Plan and approved the original Exchange Place Development Agreement. The Development Agreement has been amended several times without amending the TIF Project Plan, to reflect various changes.

On October 1, 2013, the City Council held a public hearing to consider the adoption of a new TIF Project Plan and approved by two-thirds majority vote the first reading of an ordinance adopting the Project Plan. Final adoption of the ordinance is scheduled for consent approval on October 8, 2013.

The new Developer, KS1, LLC/John McWilliams has received a loan commitment from the U.S. Department of Housing and Urban Development (“HUD”); however, recent increases in market interest rates have reduced the amount of funds the Developer can borrow, creating a funding gap. Staff has worked with the developer and his consultants and vendors to close the financing gap. Measures that address the gap are included in the proposed Amended and Restated Development Agreement, which is summarized below.

Analysis: The current TIF Project Plan is to construct 230 apartments in two vacant buildings and a new addition, and to build a 273-car automated parking structure. The total project budget is over \$66 million, of which at least \$45,000,000 is to be provided by the Developer pursuant to the Amended and Restated Development Agreement.

The Amended and Restated Development Agreement includes certain conditions precedent to be met, including the Developer providing evidence of a loan commitment from HUD and any necessary additional funding to provide the full \$45,000,000 amount of Developer Improvement Contribution.

The City will provide TIF funding in an amount not to exceed \$12,500,000 for the acquisition of land and construction of the parking structure. In addition, the Amended and Restated Development Agreement states the City’s intent to issue Industrial Revenue Bonds (IRBs) in an amount not to exceed \$30,000,000 in order to provide an exemption on sales tax for the costs of construction materials and furnishings for the project. The IRBs will be purchased with the proceeds of the HUD loan.

City funding will be paid to the HUD lender, Gershman Mortgage, to be dispersed for statutorily eligible costs as development occurs, pursuant to HUD regulations. The City will review draw requests for City funds, along with Gershman. The Developer will provide the City with a detailed accounting of final construction expenditures to ensure eligibility for TIF financing.

A \$1,000,000 escrow will be established from which the City may draw funds to cover any shortfall in TIF revenue needed for debt service on TIF bonds issued to fund the City contribution. The escrow will be funded with unused construction contingency funded by the HUD loan once the project is completed. The City will contract with Gershman Mortgage to serve as escrow agent, with the City having sole access to escrow funds to cover any shortfall in TIF revenue needed to pay TIF bonds. If TIF revenue exceeds 110% of the maximum annual debt service requirement for two consecutive years, any remaining escrow will be released to the Developer.

The Developer will not be required to pledge project cash flow to the debt service to cover any TIF shortfall. TIF cash flow is anticipated to be strong enough to not need the pledge. The City does not covenant to restrict any additional TIF project plans within the Project Area until TIF debt for the Exchange Place is retired.

Businesses with claims outstanding for payment for work previously performed on the Wichita Executive Center building will be paid one-half the amount still owed from the proceeds of the HUD loan and will receive the balance due upon completion of the construction work from funds remaining in the construction contingency fund after the City's \$1,000,000 TIF shortfall escrow has been fully funded.

Financial Considerations: The City contribution in the amount of \$12,500,000 will be paid to Gershman Mortgage at the HUD closing pursuant to closing instructions to be dispersed by Gershman. This payment will be financed by full faith and credit bonds paid by TIF revenue generated within the Exchange Place project area and TIF shortfall escrow funds. Any shortfall in revenue from these sources needed for debt service on the bonds will be paid from the City's debt service fund.

Legal Considerations: The Law Department has reviewed and approved as to form the attached home rule ordinance required to authorize the execution of the amended and restated development agreement and bonding authorization needed to initiate the TIF-funded improvement project.

Recommendation/Action: It is recommended that the City Council:

1. Approve first reading of the home rule ordinance authorizing the execution of the Amended and Restated Development Agreement and authorizing bond issuance for the TIF funded improvements and
2. Authorize the necessary signatures.

Attachment(s):

- Amended and Restated Development Agreement between the City and KS1, LLC
- Home Rule Ordinance authorizing the execution of the Development Agreement and bond issuance

(PUBLISHED IN THE *WICHITA EAGLE* ON OCTOBER 25, 2013)

ORDINANCE NO. 49-587

A HOME RULE ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS AND THE ISSUANCE OF BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF ACQUIRING REAL PROPERTY, DEMOLITION OF EXISTING STRUCTURES, AND DESIGN AND CONSTRUCTION OF A PARKING GARAGE, AND SITE IMPROVEMENTS RELATED TO THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT, EXCHANGE PLACE PROJECT AREA.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”) and Ordinance No. 47-475, passed May 8, 2007, and published May 11, 2007, the City Council (the “Governing Body”) of the City of the City established a redevelopment district pursuant to the Act., as amended, known as the Center City South Redevelopment District (the “District”); and

WHEREAS, by Ordinance No. 48-124, passed December 9, 2008, and published December 12, 2008, the City added certain property and increased the boundaries District pursuant to K.S.A. 12-1771(f) and made a substantial change to the District Plan for the District; and

WHEREAS, the City has heretofore, in 2007, approved a redevelopment project plan for the Exchange Place Project Area (the “Project Area”) within the District, which plan has been amended on two occasions; and

WHEREAS, due to economic conditions and the inability of the designated project developers to obtain financing, the redevelopment project plan has not been commenced, thus not completed and needs to be abandoned; and

WHEREAS, the City has prepared a new redevelopment project plan for the Project Area, dated as of August 22, 2013 (the “Project Plan”), has negotiated an amended and restated redevelopment agreement with respect thereto and is considering adoption of the Project Plan and approval of such redevelopment agreement; and

WHEREAS, on August 22, 2013, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Project Plan and has adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, pursuant to the requirements of the Act and Resolution No. 13-162, adopted August 27, 2013, the Governing Body conducted a public hearing on October 1, 2013 relating to the approval of the Project Plan; and

WHEREAS, by Ordinance No. 49-[____], passed October 8, 2013, and to be published October 11, 2013, the City adopted the Project Plan, which includes, but is not limited to, the acquisition of land within the Project Area, the demolishing of certain existing structures thereon, the design and construction

of a parking garage and making certain other site improvements, all in conjunction with development of additional housing and commercial structures by a private developer within the Project Area; and

WHEREAS, the Project Plan also authorizes the issuance by the City of its full faith and credit tax increment bonds of the City in order to finance all or a portion of the redevelopment project costs to be paid by the City; and

WHEREAS, the City has negotiated an amended and restated development agreement with the developer of the Project Area to implement the Project Plan, (the “Development Agreement”), which has been submitted to the Governing Body for consideration; and

WHEREAS, pursuant to the Constitution, particularly Article 12, Section 5 thereof, and statutes of the State of Kansas, particularly of K.S.A. 12-101 *et seq.*, as amended (collectively, the “Home Rule Act”), the Act and K.S.A. 13-1024a, as amended by Charter Ordinance No. 156 of the City (the “Charter Ordinance”), the Governing Body hereby finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that the City enter into the Development Agreement, authorize, in order to implement the Project Plan, the issuance of its: (a) full faith and credit tax increment bonds, in one or more series, in an aggregate principal amount necessary to finance eligible costs authorized by the Act, and related reserves and financing costs, and (b) the issuance of general obligation bonds of the City, in one or more series, in an aggregate principal amount necessary to finance costs authorized by the Home Rule Act and/or the Charter Ordinance, and related reserves and financing costs (collectively, the “Bonds”); and

WHEREAS, in connection with the implementation of the Development Agreement and issuance of the Bonds, it is contemplated that the City will enter into various other agreements and issue various certificates and the Governing Body desires to authorize execution of such necessary documents and certificates.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Development Agreement. The Development Agreement is hereby approved in substantially the form presented to the Governing Body, with such changes as may be approved by the City Attorney, which provides, in part that it is necessary to acquire real property located within the Project Area of the District, to demolish certain existing structures located thereon, and to design and construct a parking garage and site improvements located within the Project Area as described in the Project Plan. The Mayor is hereby authorized to execute the Development Agreement by and on behalf of the City and the City Clerk is hereby authorized to attest such signature.

SECTION 2. Financing Authorization. The Governing Body hereby declares it to be its intention to issue and sell, pursuant to the Home Rule Act, the Act and the Charter Ordinance, the Bonds, to finance all or a portion of the project costs described in **Section 1** hereof to be paid by the City pursuant to the Development Agreement. Project Costs allocated to the City pursuant to the Development Agreement not paid from proceeds of the Bonds may be paid from available revenues of the City. In order to temporarily finance the aforesaid project costs prior to the issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes, in one or more series, in an aggregate principal amount not exceeding the authorization for the Bonds (the “Notes”). The Bonds and Notes may be issued to reimburse the City for project costs pursuant to Treasury Regulation §1.150-2.

SECTION 3. Further Authority. The Mayor, City Manager, City Clerk and other City officials and legal counsel are hereby further authorized and directed to execute any and all documents as

may be approved by the City Attorney and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

SECTION 4. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City newspaper.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

PASSED by the Governing Body on October 22, 2013.

Carl Brewer, Mayor

(Seal)

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney

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CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the original Ordinance No. 49-587 (the “Ordinance”) of the City of Wichita, Kansas (the “City”); that said Ordinance was passed by the City Council on October 22, 2013, that the record of the final vote on its passage is found on page ____ of journal ____; that it was published in the official newspaper of the City on October 25, 2013; and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: October 25, 2013.

Karen Sublett, City Clerk

AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
REGARDING DEVELOPMENT
OF
THE EXCHANGE PLACE BUILDING,
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE

BY AND AMONG
CITY OF WICHITA, KANSAS

AND
KS1 LLC

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EXHIBITS

A	Site Plans
B	Development Budget
C	Development Schedule
D	Development Concept
E	Schedule of Tax Projections
F	Legal Descriptions – Project Land
G	Form of Letter of Intent to Issue Industrial Revenue Bonds
H	Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements

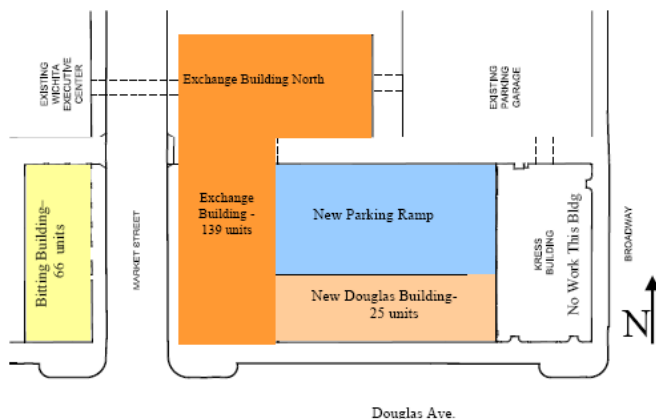
**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT
for
THE EXCHANGE PLACE BUILDING
MICHIGAN BUILDING
BITTING BUILDING
AND
PARKING GARAGE**

THIS AGREEMENT is made Effective _____, 2013 between the **City of Wichita**, a municipal corporation organized under the laws of the State of Kansas (the "**City**"), and **KS1 LLC**, a Kansas limited liability company ("**Developer**"). It amends and restates the Development Agreement for the Exchange Place Building, Michigan Building and Parking Garage dated July, 2007 and previously amended and restated December 16, 2008, April 20, 2010 and December 18, 2012.

Summary

This Agreement concerns plans to renovate the North side of the 200 block of East Douglas and the Northwest Corner of Douglas and Market. Exchange Place Building (110 N. Market) the Bitting Building (107 N. Market) and the new Douglas Building will be converted into a residential and commercial complex.

The Project complex consists of 230 residential units on upper levels, retail on the first floors and a new 273 stall parking garage. The garage will serve the apartments at Exchange and Douglas buildings, retail businesses and adjacent office buildings. The new 6 story parking garage structure will be constructed immediately east of the Exchange Place Building (212 E. Douglas) and immediately North of the new Douglas Building. A new 25 unit apartment building will be constructed on Douglas immediately east of the Exchange Place Building (212 E. Douglas) on three levels (2-4) with retail space below on first floor. It will adjoin the south end of the new garage (210 E Douglas).



Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential units at the new construction Douglas Building.
- approximately 15,000 square feet of street level retail space.
- approximately 273 parking spaces. A minimum of 209 spaces will be allocated for use by the apartments. The remaining 64 spaces will be for public parking.
- 14 parking spaces behind the Exchange Place Building.

This work with the apartments, the retail space, and the Parking Garage is collectively described as the Project.

Background and Recitals

The following Background and Recitals contain merely an overview of the Project and are not intended to fully describe the obligations of the City and Developer. The specific terms and obligations are more fully set forth in the Agreement itself.

- (i) The City will assist financing part of the Project through tax increment financing of the Parking Garage and certain of the costs related to the Exchange Place, Bitting and Michigan Buildings as allowable by state law.
- (iii) Developer will develop the Exchange Place Building, Bitting Building and Douglas Building according to the Development Plan.
- (iv) Developer will cause the Parking Garage to be constructed according to the Development Plan.
- (v) The Michigan Building will be completely removed.
- (vi) Developer will own the Exchange Place Building, the Bitting Building, the Douglas Building, Parking Garage and the apartments located in all of these buildings.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

Section 1 **Definitions and Exhibits**

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used with an initial capital letter, shall have the following meaning:

"**Agreement**" means this Development Agreement.

“Bitting Building” means the Bitting Building located at the northwest corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

"City" means the City of Wichita, a municipal corporation organized under the laws of the State of Kansas, and whenever this Agreement requires "approval of the City" or words of similar intent, such approval must come from the City Council, except as otherwise expressly provided herein.

“City Contribution” means the sum of not to exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000) which the City shall fund for the City Improvement Expenditure.

"City Council" means the City Council of the City of Wichita.

“City Improvement Expenditure” means the sum of not to exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000) which the City shall fund in part for land acquisition, demolition, site preparation, construction of a multi-level parking structure and such other “redevelopment project costs” as defined and permitted under K.S.A. 12-1770a, as amended. The City Improvement Expenditure will be funded by an escrow deposit with Gershman Mortgage or its authorized title company concurrent with the HUD loan closing required in Section 2.4.1.

"City Representative" means the City Manager of the City or his or her designee. The City Representative shall have full power and authority to implement the decisions of the City Council and to act on behalf of the City in the exercise of its rights and responsibilities under this Agreement. Developer may rely on the decisions and direction of the City Representative as the directions of the City; provided, however, if any action requires an amendment to this Agreement, it shall require the approval of the City Council.

"Completed" or "Completion" means, with respect to the Project when: (a) the Project Architect certifies in writing to the City and Developer that the construction of the Project is substantially completed in accordance with the Development Plan to permit use of the Project for the purposes for which it was intended, and (b) a conditional or final occupancy permit has been issued, which date may precede the full completion of all punch-list items, and nonessential landscaping and similar design and development functions.

"Contractors" means the General Contractor and all other contractors, subcontractors, suppliers, persons, or entities that are engaged for construction or to provide labor, materials, supplies, or services of any kind in regard to the Project.

"Developer" means KS1 LLC, a Kansas limited liability company (or its affiliate with the approval of the City Representative).

"Developer Improvement Contribution" means the sum of at least Forty Five Million Dollars (\$45,000,000) in equity funds and Loan proceeds that Developer shall make available to develop and construct the residential and commercial space as described in the Project and as set forth in the Development Budget, or such higher or lower figure as may be set in subsequent, mutually agreed modifications to the Development Budget.

"Development Budget" means a budget or budgets, including modifications of the budget(s), for the total cost of development and construction of the Project, including design, development, financing, construction, furnishing, fixturing, landscaping, hardscaping, equipping and pre-opening, as approved by the City and attached as Exhibit B.

"Development Concept" means the Development Concept attached as Exhibit D.

"Development Plan" means the Site Plan, drawings and specifications, Development Schedule, and Development Budget for the Project as approved by the City and Developer at the time of execution of this Agreement and as the same are amended by Developer with the approval of City Representative from time to time. The Parties anticipate that the Development Plan will be amended from time to time to reflect changes in market conditions and economic demands and that such changes are within the scope and intent of this Agreement, so long as the changes are consistent with the original Development Concept. To the fullest extent permitted by applicable law and ordinance, the City Representative is authorized to approve Development Plan changes consistent with the Development Concept.

"Development Schedule" means the development schedule for the Project attached as Exhibit C.

"Douglas Building" means a newly constructed building located between the Exchange Place Building and the Kress Building on Douglas Avenue in Wichita, Kansas, with a legal description given on Exhibit F.

"Exchange Place" means the apartments and street level retail space to be constructed and owned by the Developer, located in the Exchange Place Building, the Bitting Building, and the Douglas Building.

"Exchange Place Building" means the Exchange Place Building located at the northeast corner of Douglas and Market in Wichita, Kansas, with a legal description given on Exhibit F.

"Force Majeure" means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God or other cause or contingency similarly beyond control of the Party whose performance is affected thereby, but shall not include weather delays caused by rain, snow, or the like, or Project cost increases due to unforeseen conditions or price increases, or the like.

"General Contractor" means the general contractor(s) for the Exchange Place Building, Bitting Building and the General Contractor for the Parking Garage, as the case may be, to be selected by Developer.

"Industrial Revenue Bonds" means revenue bonds issued by the City under the authority of K.S.A. 12-1740 *et seq.* to finance the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling certain facilities, which bonds are payable solely as to principal and interest from rental payments on financed facilities.

“Kress Building” means the building currently located at the Northwest corner of Douglas and Broadway with a street address of 100 N. Broadway.

"Loan" means a loan from a lender(s) to Developer in an amount sufficient to allow Developer to complete the Developer Improvement Contribution pledging some or all of the Project Land and improvements.

“Loan Commitment” means a written loan commitment given to Developer from the United States Department of Housing and Urban Development (HUD) or other lender on terms acceptable to Developer and in an amount sufficient to allow Developer, together with other funding sources, to complete the Developer Improvement Contribution.

"Michigan Building" means the property commonly known by that name and located at 206 East Douglas, Wichita, Kansas, with a legal description given on Exhibit F.

“Parking Facilities” means and consists of two combined areas: the new 273 space Parking Garage and the existing 14 parking spaces located at the north area of Exchange Place Building. Collectively, the Parking Facilities will contain approximately 287 parking spaces.

"Parking Garage" means a multilevel parking facility of approximately 273 parking spaces to be constructed by Developer on the 200 block of East Douglas, east of the Exchange Place Building and west of the Kress Building, with a legal description given on Exhibit F.

"Parties" means, collectively, the City and Developer; **"Party"** means either of the Parties.

"Project" means plans to renovate the Exchange Place Building and the Bitting Building into a residential and commercial complex, and construction of a new residential building and Parking Garage on the same block east of the Exchange Place Building and west of the Kress Building. Overall, the Project will provide:

- 139 residential apartments at Exchange Place Building.
- 66 residential apartments at the Bitting Building.
- 25 residential apartments at the Douglas Building.
- approximately 16,000 square feet of street level retail space.
- approximately 273 parking spaces. A minimum of 209 spaces will be allocated for use by the apartments. The remaining spaces will be available for public parking.
- 14 parking spaces behind the Exchange Place Building.

"Project Architect" means the architect for the Project, to be selected by the Developer.

"Project Land" means the tracts or parcels of land upon which the Exchange Place Building, Bitting Building, Douglas Building, and Parking Garage site are located, described on Exhibit F, together with all rights, privileges, licenses and easements appurtenant to such tracts.

“Site Plans” means the elevation, drawings and plans depicting the appearance of the Project attached as Exhibit A.

"**Specialists and Consultants**" means the Project Architect and the Contractors, together with other planning, architectural, engineering, interior design and other specialists and consultants selected by the Developer for the design and construction of the Project.

"**Tax Increment Shortfall**" means the amount equal to the difference between the amounts actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the Center City South Redevelopment District, pursuant to K.S.A. 12-1770 *et seq.*, and the amount scheduled to be paid by the City as debt service on the City's tax increment financing bonds as set forth in Exhibit E, commencing the first year in which a payment is due on the City tax increment financing bonds issued to finance the City's costs hereunder. The attached Exhibit E is an example and will be replaced with an Exhibit E reflecting the actual interest rates and debt service after the bonds are sold.

1.2 Other Definitions. In addition to the terms defined in Section 1.1, other terms will have the definitions provided elsewhere in this Agreement.

1.3 Exhibits. The exhibits identified in this Agreement and attached to it, or otherwise identified by the signing or initialing of the Parties, are incorporated by reference and made a part of this Agreement as though they were fully set forth in the text of this Agreement.

Section 2

Project

2.1 Project. Developer shall provide the Developer Improvement Contribution, and shall provide all services, equipment, materials, supplies, labor, and every article of any kind necessary or appropriate for the planning, development, construction, and furnishing of the Project, including those needed or appropriate for opening of the Project for business, all in accordance with the Development Plan. Developer shall be an independent contractor for all purposes, and nothing contained in this Agreement nor any actions of the Parties shall be construed to create a partnership, joint venture, or agency relationship between the City and Developer. No one performing work on the Project under the direction of Developer, or under the direction of any of the Contractors, shall be deemed to be an employee of the City for any reason or purpose whatsoever.

2.2 Funding of Project Land Acquisition. Subject to satisfaction of the conditions precedent herein, the City will fund an amount up to the \$3,825,000 as described in the definition of City Improvement Expenditure, above, to pay DGL Investments, LLC for the Project Land upon satisfaction of environmental and title requirements and delivery of the documents in Section 3.1.1 below.

2.3 Project Use. Subject to applicable statutory requirements, Developer may convert and sell some or all of the apartments into condominiums at some point in the future. Any such sale might include a sale of the Parking Facilities to the condominium owners but shall in no way reduce the availability of public parking in the Parking Facilities pursuant to Section 4.7 below.

2.4 Conditions Precedent to Project. The following matters shall be completed prior to disbursement of any City Improvement Expenditure.

2.4.1 The closing by Developer of a HUD-guaranteed loan to finance the Project.

2.4.2 Developer has previously delivered to the City Representative documentation acceptable to the City showing that all creditors with claims for payment for work done on the Wichita Executive Center have been paid in full for such claims at or prior to the HUD loan closing and/or will be paid upon Completion from remaining construction contingency, to the extent such contingency funds are available pursuant to Section 8 below

Section 3

Construction Phase

3.1 Conditions Precedent to Construction. The following matters shall be completed before construction begins on the Project.

3.1.1 Delivery of Documents. The documents listed below (or copies), as well as any other documents reasonably required prior to commencement of construction, have been delivered to the City Representative. When necessary, Developer shall also procure the requisite filings of such documents with the appropriate officials:

- (a) Construction permit and all other permits required before commencement of construction;
- (b) Policies or certificate(s) of insurance evidencing that Developer has procured all insurance required by this Agreement;
- (c) Satisfactory evidence to City Representative that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing under the laws of Kansas and the laws of its state of its domicile;
- (d) The Development Budget;
- (e) The Development Plan;
- (f) Performance and labor and material payment bonds as required by City's Charter Ordinance No. 203, dated September 19, 2006;
- (g) Executed copies of the construction contract between Developer and the General Contractor, and the contract between the Developer and the Project Architect;
- (h) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by the City Representative to insure the orderly development of the Project;

- (i) Path of schedule for the Project;
- (j) All approvals from the Historic Preservation Board and all similar approvals needed for development of the Project have been obtained in writing; and
- (k) Developer and the City Representative have provided each other with their respective written waivers of their rights to cancel this Agreement under Section 9.20.

3.1.2 Closing. Developer closing on acquisition of the Exchange Place Building, Bitting Building and the site for the location of the Parking Garage.

3.2 Construction. Developer will cause commencement of construction of the Project to begin promptly upon completion of the conditions in Section 3.1.1 and 3.1.2 and receipt of the acquisition costs pursuant to Section 2.2, and Developer will pursue Completion of construction with due diligence thereafter. During construction Developer agrees to the following conditions and instructions (where applicable, to the respective parts of the Project):

- (a) To cause construction of the Project in a workmanlike manner, free of any material defects, in accordance with the final plans and specifications, and in accordance with all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws);
- (b) To obtain all utility permits, certificates of occupancy, and all other licenses, permits and easements required for the operation of the Project;
- (c) Supervise the timely and efficient performance of the Contractors and the Specialists and Consultants under their respective contracts with Developer to enable them to perform their work in a timely, safe, professional and workmanlike manner.
- (d) To utilize an invitation and selection procedure for selecting the General Contractor for the Parking Garage acceptable to the City.

3.3 Disbursements for Parking Garage. The parties agree that the City Contribution will be paid to Gershman Mortgage in conjunction with the Loan closing and that Gershman will be responsible for the disbursement of the City Contribution, without restriction as to the specific costs being paid, pursuant to HUD regulations. It is the City's expressed intent to fund the City Contribution with the proceeds of general obligation temporary notes issued pursuant to its constitutional home rule authority, and following completion of the Project to issue its full faith and credit tax interment financing bonds to permanently finance Project costs that qualify for tax increment financing pursuant to K.S.A. 12-1770a(o). The Developer agrees to provide the City with an accounting of final Project costs within ninety (90) days of Completion, in sufficient detail to identify such qualified costs.

3.4 Issuance of Industrial Revenue Bonds. The City agrees to issue its Industrial Revenue Bonds in the amount not-to-exceed \$45,000,000 to finance the construction of the Project for the purpose of providing a sales tax exemption on the construction materials and furnishings, fixtures and equipment acquired for the development of the Project. The Developer agrees to purchase such bonds or arrange for the direct placement of the bonds with its lender. The Industrial Revenue Bonds will be issued subject to the conditions set forth in the City's Letter of Intent to Issue Industrial Revenue Bonds, the form of which is attached hereto as Exhibit G.

Comment [BA1]: Increased to ensure all costs subject to sales tax are covered.

Section 4 **Additional Rights and Obligations**

4.1 Approvals. Whenever this Agreement requires the consent or approval of the City Representative, the City Representative, in his or her sole discretion, may instead present the question to the City Council for the necessary consent or approval. Notwithstanding the foregoing, the Parties intend that City Council approval shall not be required or necessary for changes in the Development Plan which do not affect the City's expenditures and are consistent with the Development Concept, unless otherwise required by law.

4.2 Title to Property. Developer shall own the improvements and the Project Land in fee simple, free and clear of all liens and encumbrances, subject only to: liens and encumbrances placed thereon by Developer and real estate taxes and special assessments.

4.3 Related Improvements. Developer may construct related improvements, such as landscaping and streetscaping, and the City Representative will coordinate and cooperate with Developer to accommodate those improvements within the Project schedule.

4.4 Development Assistance. The City will provide development assistance to Developer, as needed, to facilitate and expedite the issuance of building permits and compliance with other City-controlled requirements relating to completion of the Project.

4.5 Access to Site. The City will provide reasonable access to Developer for staging and work areas adjacent to the Project Land. Toward this end, the City will cooperate with Developer to close streets under established City procedure during agreed periods of demolition and construction.

4.6 Certificate and Release. Upon proper application by Developer, the City will issue a certificate and release to Developer in regard to the Gilbert and Mosley groundwater contamination in accordance with the customary process for application and issuance of those certificates.

4.7 Use of Parking Garage. A minimum of 64 parking spaces shall be set aside in the Parking Garage for public parking and the balance for the exclusive use of the residents and guests of Exchange Place Building and Douglas Building. This allocation can be revised by Developer as market experience may demonstrate a need to reallocate parking spaces with consent of the City Representative (which consent shall not be unreasonably withheld or delayed).

Section 5
Insurance, Bonding, and Indemnification

5.1 **Types of Coverage.** Developer shall carry, or cause the General Contractor to carry, the following insurance coverage insuring Developer, General Contractor, and City through final completion (as defined in the construction contracts):

- (a) Special or builder's "all risk" insurance (including theft, vandalism, boiler, and pressure vessel coverage), in an amount reasonably acceptable to the City representative, insuring Developer's and City's interests in the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer or City in the Project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction);
- (b) Comprehensive general liability insurance insuring Developer and City against all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, City, and their respective agents, contractors, or employees, in connection with the design and construction of the Project, in the amount of not less than Five Hundred Thousand Dollars (\$500,000) or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies shall not name the City, or insure the City, for an amount of coverage in excess of the City's maximum liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);
- (c) Workers' compensation insurance;
- (d) Performance and labor and material payment bonds for the General Contractor as required by City Charter Ordinance No. 203;
- (e) Automobile insurance (if applicable) with per occurrence limits of not less than \$500,000; and
- (f) All other insurance as required by law.

5.2 **Policy Requirements.** The following general requirements shall apply to all insurance coverage carried by Developer and General Contractor pursuant to Section 5.1:

- (a) To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;
- (b) Subject to the limitations on general liability insurance in Section 5.1(b), the City shall be named as its interests appear in all policies obtained by Developer and General Contractor;

- (c) Such policies shall be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;
- (d) Developer shall provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;
- (e) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by Developer to the City Representative; and
- (f) The policies must be non-cancelable unless the carrier provides to the City Representative thirty (30) days' prior written notice of cancellation.

5.3 **Indemnification.** Developer agrees to indemnify, hold harmless, and defend City and members of the City Council, officers, agents, and employees (collectively referred to as the "**City Indemnified Parties**") from and against all loss, damage, liability, cost or expense including, but not limited to, attorneys' fees and court costs incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of Developer, its officers, directors, agents, or employees, or the accuracy or incompleteness of information furnished by these persons to the City.

The City's liability for any claims asserted by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of the City, its officers, directors, agents, or employees, shall be governed by the Kansas Tort Claims Act and other applicable laws of the State of Kansas.

Section 6

Term and Survival

The term of this Agreement shall commence upon the date of this Agreement and, unless terminated sooner as provided in this Agreement, shall end on the date that all of the following have occurred: the City Improvement Expenditure have been released to Developer or otherwise paid; the Project is Completed; the Project is open to the public; and, any balance remaining in the Tax Increment Shortfall Escrow has been released to Developer. However, the following provisions of this Agreement shall survive beyond the end of the term: all representations and warranties; all agreements of indemnification; all obligations of conveyance of title; parking allocations under Section 4.7; limitations on assignment under Section 9.16; and limitations concerning the Cash Basis and Budget Laws.

Section 7
Representations, Warranties, and Guaranties

7.1 City. The City warrants and represents to Developer as follows:

- (a) It is a municipal corporation, duly incorporated and validly existing under the laws of the State of Kansas.
- (b) To the best of its knowledge, it has full power and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the limitations expressed herein or otherwise imposed by law.
- (c) Neither the execution and delivery of this Agreement and the other documents contemplated herein nor the making of the City Improvement Expenditure will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

7.2 Developer. The Developer warrants and represents to City as follows:

- (a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of Kansas.
- (b) It has the requisite power through John McWilliams Jr. to execute the documents under this Agreement and to consummate the transactions contemplated thereby.
- (c) Neither the execution and delivery of the documents on its part, nor the making of the Developer Improvement Contribution, nor the construction of the Project will conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.
- (d) It is duly authorized and registered to carry on business in Kansas pursuant to the laws of Kansas.
- (e) Before commencement of construction, Developer will have examined the Project Land, the Exchange Place Building and the Bitting Building and made all other investigations it deems necessary to perform its duties under this Agreement and satisfy itself that there exists no condition on or about the Project Land or said buildings that would materially hinder or prohibit development of the Project as described in the Development Plan. The warranty under this subparagraph (e) does not restrict Developer's right to cancel this Agreement as provided in Section 9.20.

- (f) All contracts with Contractors shall warrant that the work performed or material supplied by that Contractor to the Project will be free from any defects in materials and workmanship for a period of at least one (1) year from the date of Completion, and that such warranty does not restrict or otherwise limit that Contractor's obligation to construct the Project in a workmanlike manner and in accordance with the Development Plan as it pertains to that Contractor's work.
- (g) It shall use reasonable care to insure that all Specialists and Consultants selected in connection with the design and construction of the Project shall be highly qualified to do the work they are engaged to perform and Developer shall make reasonable inquiries as to such persons' background, experience and reputation to assure they are well qualified to undertake such work.

Section 8

Tax Increment Shortfall Escrow

Upon Completion of the Project, any funds held by Gershman Mortgage as construction contingency funds will be deposited in a separate Tax Increment Shortfall Escrow account to be held by Gershman for the benefit of the City, up to the amount of One Million Dollars (\$1,000,000). In the event there is Tax Increment Shortfall, as defined above, the City may draw such sums as may be available in the Tax Increment Shortfall Escrow. The Developer acknowledges that the City shall enter into a separate agreement with Gershman for the administration of the Tax Increment Shortfall Escrow and that the Tax Increment Shortfall Escrow shall not be used as security for the HUD Loan.

When all Tax Increment Shortfall has been paid and the amounts actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the Center City South Redevelopment District, pursuant to K.S.A. 12-1770 *et seq.*, exceed 110% of the maximum amount projected to be paid by the City as annual debt service on the City's tax increment financing bonds as set forth in Exhibit E for two consecutive years, as documented to the satisfaction of the City, any remaining balance in the Tax Increment Shortfall Escrow will be released to Developer.

Section 9

General Provisions

9.1 **Governing Law.** This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Kansas only.

9.2 **No Waiver.** No failure of a Party to exercise any power given under this Agreement or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

9.3 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect.

9.4 Written Amendments. Any amendment to this Agreement shall not be binding on any of the Parties unless the amendment is in writing, is duly authorized, and is duly executed by the Parties to this Agreement.

9.5 Time of Essence. Time is of the essence of this Agreement.

9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

9.7 Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

9.8 Notices. All notices required to be given under this Agreement shall be delivered in writing and delivered either by (a) hand delivery, and considered delivered upon receipt, (b) telefacsimile, and considered delivered upon completion of transmittal, (c) certified mail, and considered delivered upon signed receipt or refusal to accept notice, or (d) nationally-recognized overnight delivery service, and considered delivered the next business day after the notice is deposited with that service for delivery. For notice purposes, the Parties agree to keep each other informed at all times of their current addresses. For purposes of notices or other written communications, the addresses of the Parties shall be as follows:

(a) If to the City:

City Manager
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4519

and

City Clerk
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202

and

City Attorney
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4335

(b) If to Developer:

John K. McWilliams, Manager
KS1 LLC
7979 East Princess Drive, Suite 17
Scottsdale, Arizona 85255
Fax # (435) 575-0143

9.9 Nondiscrimination and Equal Economic Opportunity. The Parties covenant and agree that in the performance of their duties and obligations under this Agreement and any other document, instrument, or agreement in connection with the transactions contemplated by this Agreement, neither of the Parties, nor their respective agents, employees, officers, directors, consultants, contractors or subcontractors, will discriminate against any applicant for employment or employee because of race, color, religion, sex, national origin, age, handicapped or disability status, or veterans status. The Parties agree to adhere to the City's standard contracting requirements as they relate to Nondiscrimination and Equal Employment Opportunity as set forth in Exhibit H.

9.10 Severability. If any clause or provision of this Agreement is or becomes invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected by such invalidity or unenforceability, and the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

9.11 Licenses and Permits. It shall be the ultimate responsibility of Developer to secure all local licenses and permits required to be obtained by Developer or City with respect to construction, completion and occupancy of the Project, including any necessary building, occupancy, sewer and utility permits. The City shall cooperate with Developer and all Contractors to the extent permitted by law in connection with the issuance of these licenses and permits.

9.12 Documents. All as-built drawings, plans, specifications, and other documents prepared for the Project pursuant to this Agreement shall become or remain the property of Developer whether or not the Project is Completed.

9.13 Approvals. Whenever the approval or consent of a Party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

9.14 "Including." Whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the words "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

9.15 Binding Effect. Subject to the limitations of Section 9.16, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

9.16 Assignment. Except as provided herein, no Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Parties, and any such

assignment without such consent shall be void. The City may assign all or part of its interest to a city-established entity without approval of the other Parties so long as such assignee has the legal authority to fulfill the City's obligations under this Agreement and, to the extent that it does not have such authority, the assignment shall continue in effect but the City will remain obligated for such nonassignable or unauthorized obligations. Members of the Developer may pledge their membership interests in the Developer entity to the lender holding the primary Loan on the Project if so required by such lender. Developer may transfer membership interests to other parties without the consent of the City; provided however, no such transfer may occur unless John McWilliams remains the manager of the Developer and unless John McWilliams retains at least a 75% ownership interest in the Developer, either personally or through ownership in an entity that is a member of the Developer.

9.17 Brokerage Commissions. Except as noted below, both Parties represent to the other that they have not discussed this Agreement or the subject matter thereof with any real estate broker, agent or salesperson so as to create any legal right in any such broker, agent or salesperson to claim a real estate commission or similar fee with respect to the transactions contemplated by this Agreement. Both Parties hereby indemnify the other Party against and agree to hold the other harmless from any and all claims, suits, or judgments (including, without limitation, court costs and attorneys' fees incurred in connection with any such claims, suits or judgments) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the transactions contemplated by this Agreement.

9.18 Cash Basis and Budget Laws. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law.

9.19 Other Agreements. The Parties also covenant to negotiate and execute such additional documents as may be reasonably necessary to provide for the coordinated construction and operation of the Project.

9.20 Cancellation. In addition to other cancellation provisions under this Agreement, this Agreement may be cancelled by Developer before payment of costs for acquisition of the Project Land if:

- < the improvements to the Project contemplated by this Agreement cannot be made within the Development Budget; or
- < Developer is unable to obtain financing and equity sufficient to make the Developer Improvement Contribution.

If Developer cancels this Agreement under the terms of this Section 9.20, then the Parties will pay their own expenses incurred to date, without seeking compensation from each other, and they shall have no further obligations toward each other.

9.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

9.22 Force Majeure. If an act of Force Majeure so damages the Project that it cannot be Completed within the Development Budget, then either Party may terminate this Agreement by giving written notice to the other. In that event, the Parties will pay their own respective costs and expenses incurred and thereafter have no further obligation to Complete construction and development of the Project.

CITY:

City of Wichita

By: _____
Carl Brewer, Mayor

Attest: _____
Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, City Attorney

DEVELOPER:

KS1 LLC

By: _____
John K. McWilliams, Manager

Exchange Place LLC executes this Development Agreement for the purpose of consenting to the substitution of KS1 LLC for Exchange Place LLC as Developer.

Exchange Place LLC

By: _____
Michael Elzufon, Manager

EXHIBIT A

Site Plans

EXHIBIT B

Development Budget:

Sources and Uses of Funds per HUD Form 92013

EXHIBIT C
Development Schedule

EXHIBIT D

Development Concept March 24, 2010

The Project consists of two major components: (1) creation of 230 residential units and retail space in the downtown core by renovation of the Exchange Place Building and the Bitting Building and construction of a new Douglas Building and (2) construction of a new 273 stall Parking Garage.

Residential Units and Retail. The Exchange Place Building and the Bitting Buildings are located on the Northeast and Northwest corners of East Douglas and Market. The new Douglas Building will be located east of the Exchange Place Building. They will be converted and constructed into a residential and commercial complex which the Developer will convert and sell as condominiums. Any such sale might include a sale of the Parking Facilities to the condominium owners. Overall, the Project will provide:

- 230 residential apartments; and
- Approximately 15,000 square feet of street level retail space.

The collective apartments for all three buildings will be called Exchange Place apartments. Retail space will be located on the ground floor and serve occupants of the buildings as well as enhancing the availability of services for other workers and residents in the Downtown core area. Construction will begin after closing of the construction loan, and is anticipated to begin in the 3rd quarter of 2010 and be completed in eighteen months with an estimated cost of improvements of not less than \$34,000,000.

Parking Facilities. Developer will construct a multilevel Parking Garage on the 200 block of East Douglas, west of the Kress Building and north / behind the new Douglas Building to contain 273 parking spaces. Additional parking spaces (14) will be located behind (north of) the Exchange Place Building. These two facilities are collectively described as the Parking Facilities and will contain approximately 287 parking spaces. And, because of the automated system in the Parking Garage, can provide parking for over 500 residential and retail/office users. A minimum of 64 of these spaces will be available for daily and monthly public use. Construction is anticipated to begin in the 3rd quarter of 2010 and be complete in the 2nd quarter of 2011 at an estimated cost of approximately \$7,801,557 which the City will fund up to the amount available under the City Contribution.

Compatible Facing. The Douglas Avenue sides of The Exchange Place Building/ and the Douglas Building will be designed to have compatible facing. The Project's exterior facades have already been reviewed and approved by the City's Historic Preservation Board. Plans will also be submitted for review by the Design Council.



EXHIBIT E

**Projected Debt Service Schedule
City of Wichita, Kansas – Tax Increment Financing Bonds**

City of Wichita, Kansas
Center City South Redevelopment District
Exchange Place Project

Annual Period Ending (1)	Principal (2)	G.O. Taxable Rate (3)	Interest (4)	P&I (5)	Projected Revenue Available (7)	\$1M Escrow (8)	Annual Balance (9)	Cumulative Balance (10)
9/1/2016	360,000	3.50%	227,500	587,500	418,424	169,076	-	-
9/1/2017	380,000	3.50%	442,400	822,400	638,797	183,603	-	-
9/1/2018	575,000	3.50%	429,100	1,004,100	832,000	172,100	-	-
9/1/2019	620,000	3.50%	408,975	1,028,975	851,338	177,637	-	-
9/1/2020	650,000	3.50%	387,275	1,037,275	873,678	163,597	-	-
9/1/2021	600,000	3.50%	364,525	964,525	896,459	68,066	-	-
9/1/2022	585,000	3.50%	343,525	928,525	919,688	65,921	57,084	57,084
9/1/2023	580,000	3.50%	323,050	903,050	943,375		40,325	97,410
9/1/2024	630,000	3.50%	302,750	932,750	967,529		34,779	132,189
9/1/2025	680,000	3.50%	280,700	960,700	992,159		31,459	163,648
9/1/2026	730,000	3.50%	256,900	986,900	1,017,273		30,373	194,021
9/1/2027	770,000	3.50%	231,350	1,001,350	1,042,883		41,533	235,554
9/1/2028	830,000	3.50%	204,400	1,034,400	1,068,997		34,597	270,151
9/1/2029	870,000	3.50%	175,350	1,045,350	1,095,625		50,275	320,426
9/1/2030	940,000	3.50%	144,900	1,084,900	1,122,778		37,878	358,304
9/1/2031	1,000,000	3.50%	112,000	1,112,000	1,150,466		38,466	396,771
9/1/2032	1,070,000	3.50%	77,000	1,147,000	1,178,700		31,700	428,470
9/1/2033	1,130,000	3.50%	39,550	1,169,550	1,207,489		37,939	466,409
	13,000,000		4,751,250	17,751,250	17,217,659		466,409	

EXHIBIT F

Legal Descriptions – Project Land (General legal descriptions to be finalized prior to conveyance)

Exchange Place Building

Lot 110 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 112 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lot 114 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the South Half of the East and West alley adjoining said Lot on the North.

Lots 14 and 16, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, together with the vacated airspace above a height of 13.5 feet over the West 70 1/10 feet of the North Half of the East and West alley adjoining said Lot 14 on the South.

Lot 18 and the South 0.20 feet of Lot 20, on Market Street, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Bitting Building

East 20½ Feet of Lot 106 and all of Lot 108 on Douglas Avenue, in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

Michigan Building

Lot 116 and the West one Foot of Lot 118, on Douglas Avenue in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas.

Parking Garage Douglas Building-200 block of East Douglas, West of the Kress Building

Lot 118, except the West one Foot and all of Lot 120 on Douglas Avenue, in Greiffenstein's Original Town, now City of Wichita, Sedgwick County, Kansas, AND a tract described as follows: Beginning 175 feet East from the Monument on Market Street on the North side of Douglas Avenue, said point being on the West side of alley; thence West 3 feet 1½ inches; thence North 130 Feet to the alley; thence East 3 Feet 1½ inches to alley; thence South 130 Feet to the place of beginning.

Lots 122, 124, and 126 on Douglas Avenue in Greiffenstein's Original Town, Wichita, Sedgwick County, Kansas.

EXHIBIT G

Form of Letter of Intent to Issue Industrial Revenue Bonds

October __, 2013

Mr. John K. McWilliams, Manager
KS1 LLC
7979 East Princess Drive, Suite 17
Scottsdale, Arizona 85255

Dear Mr. McWilliams:

In accordance with the action taken at a regular meeting held on October __, 2013, the Mayor of the City of Wichita, Kansas, on behalf of the governing body of such City, hereby tenders its written intent to issue an amount not to exceed \$45,000,000 in City of Wichita Taxable Industrial Revenue Bonds. Absent subsequent rescission or extension by action of the governing body, this intent to issue bonds will remain in effect for a period of one year, ending December 31, 2014. This letter of intent is an indication of the intent of the City to issue the proposed bonds, and is subject in all respects to the governing body's final approval of the terms of the Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty Agreement and other related documents. In the event that the proposed Taxable Industrial Revenue Bonds are not ultimately issued for any reason, the City of Wichita, Kansas shall not be deemed to have assumed or incurred any liability or obligation to KS1 LLC or any other party by virtue of any proceedings or actions taken in connection therewith.

The purpose of the bond issue will be to enable KS1 LLC to construct and equip two the Exchange Place Project, a mixed-use residential/commercial development located at the intersection of Douglas Avenue and Market Street, in the City of Wichita, to be leased to KS1 LLC. KS1 LLC has represented that it will make a total capital investment in the project of approximately \$45,000,000.

The City's governing body has also approved sales tax exemption, with an estimated value of \$1,000,000. The sales tax exemption is within the description of "public incentives" in the City's Economic Development Incentive Policy, and will be fully subject to the ongoing compliance and repayment provisions of such policy.

This intent to issue bonds is given subject to the following conditions:

1. Negotiation of a Lease Agreement, which will preclude assignments or subleases made without the City's consent, and which will also contain requirements for completion of the capital investment referred to above, timely payment of all property taxes, compliance with all applicable governmental laws, rules and regulations (including ordinances of the City, as they exist or may hereafter be adopted, pertaining to civil rights and equal employment

opportunity, as required by Section 2.12.950 of the Code of the City of Wichita), and provision for payment to the City of any amounts necessary to recapture from KS1 LLC, the financial benefit conferred by the sales tax exemption associated with the issuance of the bonds, in the event that KS1 LLC fails to comply (or cause its sublessees to comply) with any of the conditions referenced in this paragraph.

2. Preparation of an appropriate Bond Ordinance, which will contain a provision pledging the financed property and net earnings therefrom as security for payment of the bonds, pursuant to K.S.A. 12-1744.
3. Execution of guarantees for the payment of the bonds (which, for the tenant, may be in the form of an unconditional guaranty incorporated in the Lease).
4. Agreement to pay all costs incurred by the City for processing the application and issuance of the bonds.
5. Agreement to enter into the City's Administrative Service Fee Agreement providing for annual payments of \$2,500 each year for the time period in which the bonds are outstanding.
6. Agreement that, prior to the issuance of the bonds, the applicant and any proposed sublessees will have an approved Equal Employment Opportunity/Affirmative Action Plan on File with the City.
7. An agreement that, prior to the issuance of the bonds, the applicant will have obtained approval from City staff of a proposed water conservation plan.
8. An agreement to make any payment required as a condition of the letter of intent, or which may be required as a contingent payment in the Lease in the event that certain conditions (including failure to comply with other conditions of the letter of intent or the City's Economic Development Incentive Policy) occur during the time period in which the bonds are outstanding.
9. An agreement to provide the City, at the time the proposed Lease agreement is submitted, an Environmental Site Assessment ("ESA"), performed by an independent consultant recognized as an expert in the area, that documents the environmental condition of the property; bonds generally will not be issued if the ESA discloses environmental conditions that might lead to monetary liability for owners or operators of the property.
10. An agreement, to be incorporated in the Lease agreement, that the applicant will use and operate the project in accordance with all applicable environmental laws and regulations, and will indemnify and hold the City harmless from any and all liabilities (other than liabilities resulting from environmental contamination primarily caused by the City's own agents or employees) arising under any environmental law or regulation.
11. An agreement to furnish copies of any annual financial audits to the City.
12. An agreement to cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the applicant and any inspections of the applicant's premises or interviews with the applicant's staff.

13. An agreement to obtain all insurance the City may require in connection with the construction, maintenance or operation of the project, or liabilities arising out of the operation of the project, including (without limitation) a performance bond sufficient to secure completion of the project.
14. An agreement that, prior to issuance of the bonds, the applicant will provide proof that all ad valorem property taxes on the project property due and owing up to the proposed date of issuance have been paid.
15. Arrangement (such as a Bond Placement Agreement) for the sale of the bonds, which shall contain suitable indemnification agreements from the prospective tenant indemnifying and holding the City harmless from liabilities arising from disclosure or registration provisions of state or federal securities laws.
16. An agreement that the tenant will not, while any of the bonds are outstanding, have a commercial banking relationship with the trustee of the bond issue, unless the bondholders shall first acknowledge in writing the existence of the relationship and waive any conflict that might exist as a result of such relationship.
17. An agreement that prior to the issuance of the bonds, the prospective tenant will obtain a suitable commitment for a policy of title insurance insuring the title of any real property conveyed to the City in connection with the financing.

As a guide for developing the Lease Agreement and Bond Ordinance, the Exchange Place Development Agreement dated October __, 2013, to the extent not inconsistent herewith, is incorporated as a part of this letter. A copy of this letter is enclosed for your records. Please sign and return the original to the City's Office of Urban Development, 455 N. Main Street – 13th Floor, Wichita, Kansas 67202, to evidence KS1 LLC's acceptance of the terms and conditions hereof.

Sincerely,

Carl Brewer
Mayor

ATTEST:

Karen Sublett, City Clerk

ACCEPTED:

KS1 LLC

John K. McWilliams, Manager

EXHIBIT H

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination --

Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Approval of the Issuance of STAR Bonds for the K-96 Greenwich Star Bond Project (District II)

INITIATED BY: Urban Development Office

AGENDA: New Business

Recommendation: Approve the first reading of the ordinance authorizing the issuance of Sales Tax and Revenue (STAR) Bonds and execution of related issuance documents.

Background: On March 6, 2012, the City Council took the necessary legal steps to establish the K-96 Greenwich STAR Bond Project District, following a determination of eligibility by the Kansas Secretary of Commerce. On January 22, 2013, the City Council passed an ordinance approving the adoption of the Phase 1 STAR Bond Project Plan, which provided the details of a multi-use commercial development located within the K-96 Greenwich STAR Bond District, which is based on the development of a major multi-sport athletic complex called the Goodsports Fieldhouse. On June 3, 2013, the City received a letter from the Kansas Secretary of Commerce approving the STAR Bond Project Plan and authorizing the issuance of STAR Bonds in the amount necessary to fund net project costs totaling \$31,570,000.

On September 10, 2013, the City Council approved a development agreement with the K-96 Greenwich STAR Bond Developers, setting forth the rights, duties and obligations of the City and Developers with regard to the Phase I STAR Bond Project. The Developers now request the approval and issuance of the STAR Bonds.

Analysis: The details of the issuance of the STAR Bonds are more fully described below:

Project Financing: STAR Bonds may be used to fund not-to-exceed \$31,570,000 in interchange improvements and other eligible costs. Private Debt and Equity financing will privately fund all land acquisition and private developments not funded by STAR Bonds, estimated to cost \$89,494,289.

STAR Bond Financing (in priority order):

• Interchange and Related Infrastructure Improvements	\$ 3,867,711
• Fieldhouse construction	\$ 5,500,000
• On-site Public Infrastructure	\$ 9,184,297
• Land Acquisition (STAR Bond Tract)	\$ 7,835,050
• Design Costs	\$ 1,000,000
• Contingency	\$ 1,197,942
• Water Sports Attraction	\$ 2,000,000
• Legal and Accounting	\$ 250,000
• Reimbursement of Previous Expenses	\$ 735,000
Total Net STAR Bond Proceeds	\$31,570,000

Interchange and Related Infrastructure Improvement Funding Sources:

• STAR Bond proceeds	\$3,867,711
• G.O. Bond proceeds (CIP)	
o Local Sales Tax	\$1,000,000
o G.O. Bonds	\$1,000,000
o Cabela's CID	\$1,500,000
• Special Assessment Bond proceeds	<u>\$2,132,289</u>
Total Interchange and Related Infrastructure Costs	\$9,500,000

Issuance of STAR Bonds: The attached Bond Ordinance authorizes the issuance of the STAR Bonds in the amount not-to-exceed \$45,000,000 and the execution and delivery of a Bond Trust Indenture with Security Bank of Kansas City as Bond Trustee. It additionally authorizes the execution and delivery of a Tax Distribution Agreement among the City, the Bond Trustee and the State Department of Revenue pursuant to which incremental sales tax revenues will be distributed, a purchase contract with the purchaser of the STAR Bonds, and other documents and instruments necessary to accomplish the issuance and delivery of the STAR Bonds.

The not-to-exceed total principal amount will fund not-to-exceed \$29,570,000 of project costs plus costs of issuance, capitalized interest during construction and needed reserves.

The STAR Bonds will mature in 20 years, and will be subject to optional redemption at par after seven years. The purchaser of the STAR Bonds is ORIX USA, an international financial services firm based in Dallas, Texas.

Financial Considerations: The STAR Bonds will be issued as special obligation bonds, payable solely from incremental sales tax and other eligible revenue, and shall not be general obligation debt of the City of Wichita. Incremental state and local sales tax generated within the STAR Bond District will be captured by the Kansas Department of Revenue and forwarded periodically to the Bond Trustee.

Legal Considerations: The Bond Ordinance and related bond documents have been drafted by the City's bond counsel, the law firm of Gilmore & Bell, P.C. The City's Law Department has approved the ordinance as to form.

Recommendations/Actions: It is recommended that the City Council approve first reading the STAR Bond Ordinance authorizing the issuance of not-to-exceed \$45,000,000 in STAR Bonds for the K-96 Greenwich STAR Bond Project, with final adoption of the Ordinance made subject to approval of any substantive changes to bond documents at second reading and approval of the terms of the bond issue by the Kansas Secretary of Commerce.

Attachments: STAR Bond Ordinance

(Published in *The Wichita Eagle* on October 25, 2013)

ORDINANCE NO. 49- 588

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AUTHORIZING THE ISSUANCE OF ITS SALES TAX SPECIAL OBLIGATION REVENUE BONDS (K-96 GREENWICH STAR BOND PROJECT) IN ONE OR MORE SERIES FOR THE PURPOSE OF FINANCING CERTAIN COSTS RELATING TO THE PHASE I STAR BOND PROJECT PLAN; AUTHORIZING AND APPROVING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS.

WHEREAS, City of Wichita, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, the Governing Body, by Resolution No. 12-006, adopted January 10, 2012, described a STAR bond district plan which identifies proposed STAR bond project areas and proposed buildings and facilities to be constructed or improved within the proposed K-96 Greenwich STAR Bond Project District (the “District Plan”); and

WHEREAS, by Ordinance No. 49-208, passed March 6, 2012, and published on March 9, 2012, the City Council of the City (the “Governing Body”), established a STAR bond district pursuant to K.S.A. 12-17,160 *et seq.*, as amended (the “Act”), known as the K-96 Greenwich STAR Bond Project District; and

WHEREAS, the Governing Body, by Resolution No. 12-088, adopted May 1, 2012, set a public hearing on a proposal to amend the District Plan to include the ability to fund the cost of developing a multi-sport athletic complex pursuant to the Act; and

WHEREAS, by Ordinance No. 49-281 passed June 12, 2012, and published June 15, 2012, the Governing Body amended the District Plan to include the ability to fund the cost of developing a multi-sport athletic complex; and

WHEREAS, the Governing Body, by Resolution No. 12-259, adopted December 11, 2012, set a public hearing to consider adoption of a STAR bond project plan (the “Phase I STAR Bond Project Plan”) on January 15, 2013, at 9:15 a.m. or thereafter, in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas; and

WHEREAS, prior to the adoption of Resolution No. 12-259, the Wichita Sedgwick County Metropolitan Area Planning Commission has reviewed the proposed Phase I STAR Bond Project Plan and determined that the Phase I STAR Bond Project Plan is consistent with the intent of the comprehensive general plan for the development of the City; and

WHEREAS, the Phase I STAR Bond Project Plan and a map of the area to be developed were available for inspection during the regular office hours in the office of the City Clerk, City Hall, 13th Floor, 455 N. Main, Wichita, Kansas, prior to the public hearing held on January 15, 2013, which plan included the feasibility study, market impact study, maps and boundary descriptions, descriptions of the public improvement projects, relocation assistance plan and other information pertinent to the Phase I STAR Bond Project described therein; and

WHEREAS, a copy of the Phase I STAR Bond Project Plan was delivered to Board of County Commissioners of Sedgwick County and the Boards of Education of Unified School District Nos. 259 and 375 in accordance with the provisions of the Act; and

WHEREAS, a public hearing was held on January 15, 2013, after duly published, delivered and mailed notice in accordance with the provisions of the Act; and

WHEREAS, by Ordinance No. 49-438 passed February 5, 2013 and published February 22, 2013, the Governing Body made certain findings required by the Act and adopted the Phase I STAR Bond Project Plan; and

WHEREAS, on June 3, 2013, the Secretary of the Kansas Department of Commerce (the "Secretary"): (a) determined that the K-96 Greenwich STAR Bond District constitutes a major commercial entertainment and tourism area and is therefore an "eligible area" under the STAR Bond Act, (b) approved and designated the Phase I STAR Bond Project as a "STAR bond project" within the meaning of the STAR Bond Act and (c) approved financing of certain costs of the Phase I STAR Bond Project Plan with STAR bond financing in the amount of \$31,570,000 (exclusive of financing costs); and

WHEREAS, the City is authorized under the Act to issue special obligation revenue bonds for the purpose of financing costs to implement the Phase I STAR Bond Project Plan; and

WHEREAS, the Governing Body hereby finds and determines that the financing of the Project (as defined in the hereinafter authorized Bond Indenture) by issuance of special obligation revenue bonds in the manner provided in the Act and pursuant to the provisions of the Bond Indenture, will serve one or more of the public purposes set forth in the Act and will promote, stimulate and develop the general and economic welfare of the City; and

WHEREAS, the Governing Body further finds and determines that it is necessary and desirable in connection with the issuance of the Bonds that the City enter into certain agreements, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Authorization of the Bonds. The City is hereby authorized to issue and sell its special obligation revenue bonds in the maximum aggregate principal amount of not to exceed \$45,000,000 (the "Bonds"), the proceeds of which will be used to: (a) finance a portion a portion of the costs of the Project; (b) fund debt service reserve funds; (c) fund interest on the Bonds during construction of the Project; and (d) pay costs of issuing the Bonds. The Bonds shall be issued and secured pursuant to the herein authorized Bond Indenture and shall bear such dates, shall be in such denominations, shall be in such forms, shall mature on the dates and in the principal amounts, shall bear interest at a fixed rate which shall not exceed amount set forth in K.S.A. 10-1009 and shall be subject to redemption on the dates and in the principal amounts as provided in the Bond Indenture, and shall have such other terms and provisions, shall be issued, executed, authenticated and delivered in such manner

and shall be subject to such provisions, covenants and agreements, as are approved by the Secretary, all as set forth in the Bond Indenture. Pursuant to the Act, the provision of the Bond Indenture referenced above are being expressly authorized by this ordinance and incorporated herein by reference .

The Bonds, together with interest thereon, are not general obligations of the City but are limited obligations payable solely from the trust estate pledged to the payment thereof under the Bond Indenture and shall be a valid claim of the respective holders thereof only against the trust estate and other moneys held by the Trustee and the revenues so pledged as aforesaid. In no event shall the Bonds be payable out of any funds or properties other than those pledged or acquired under the Bond Indenture, and the Bonds shall not be deemed to constitute a debt or liability of the City, the State of Kansas or of any political subdivision thereof and the issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the State of Kansas or any political subdivision thereof to levy any form of taxation therefore. Nothing in the Bonds, the Bond Indenture, the proceedings of the City authorizing the Bonds or the Act shall be construed to be a debt or loan of credit of the City, the State of Kansas or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

Section 2. Authorization and Approval of Documents. The following documents are hereby approved in substantially the forms presented to and reviewed by the City at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver each of such documents to which the City is a party (the “City Documents”) with such changes therein as shall be approved by the officer or officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval and the City's ratification or approval thereof:

(a) Bond Trust Indenture dated as of the date stated therein (the “Bond Indenture”) between the City and Security Bank of Kansas City, as trustee (the “Trustee”).

(b) An agreement to purchase the Bonds, dated as of the date stated therein between the City and the purchaser named therein.

(c) STAR Bond District Tax Distribution Agreement dated as of the date stated therein among the City, the Trustee and the Treasurer of the State of Kansas.

(d) Tax Compliance Agreements dated as of the date stated therein between the City and the Trustee, relating to the Bonds.

Section 3. Execution of Bonds and Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Bond Indenture. The Mayor or Vice Mayor of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds, and the City Clerk or any Deputy City Clerk is hereby authorized to attest to and affix the seal of the City to the City Documents and such other documents, certificates and instruments as may be necessary.

Section 4. Further Authority. The City shall, and the officers, employees and agents of the City are hereby authorized and directed to, take such action, expend such funds and execute such other documents, deeds, agreements, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and the transactions contemplated therein and to

carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents, including, but not limited to, agreements with respect to the investment of any funds held under the Bond Indenture. Springsted Incorporated, the City's financial advisor, and Gilmore & Bell, P.C., the City's bond counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the intent of this Ordinance.

Section 5. Effective Date. This Ordinance shall take effect and be in full force after its adoption by the City and publication once in the official newspaper of the City.

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PASSED by the Governing Body on October 22, 2013.

Carl Brewer, Mayor

(Seal)

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney

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CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the original Ordinance No. 49-[____] (the “Ordinance”) of the City of Wichita, Kansas (the “City”); that said Ordinance was passed by the City Council on October 22, 2013, that the record of the final vote on its passage is found on page ____ of journal ____; that it was published in the official newspaper of the City on October 22; and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: October 25, 2013.

Karen Sublett, City Clerk

**City of Wichita
City Council Meeting
October 8, 2013**

TO: Mayor and City Council

SUBJECT: Improvements to Kellogg from Cypress to Wiedemann (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the construction and construction engineering budget, and place the ordinance on first reading.

Background: On March 2, 2010, the City Council approved a design concept for the expansion of East Kellogg to a six-lane freeway between Cypress and Wiedemann. The approved design concept includes improvements to the interchange at Webb and the Kansas Turnpike Authority (KTA), with one-way frontage roads providing access to properties adjacent to Kellogg.

Analysis: Construction of the Kellogg, Webb, and KTA Interchange is slated to begin in early 2014, pending completion of right-of-way acquisition and utility relocation. Right-of-way acquisition is nearly complete and will require demolition of multiple properties. In addition, negotiations with utility companies for eligible relocation costs are nearly complete. A request for proposals is currently underway to select a consulting firm to oversee the construction engineering and administration for the project. The construction engineering services will include a separate component for the current design team to review and approve shop drawings, artistic elements, and other related aspects.

State and Federal funding administered through the Kansas Department of Transportation will require standard agreements to be signed throughout the course of the project. Design needs may require the acquisition and granting of easements, the signing of utility relocation agreements and compensation for the same, and the signing of required permits and compensation for the same.

Financial Considerations: The 2011-2020 Adopted Capital Improvement Program (CIP) includes construction funding for the Kellogg, Webb, and KTA Interchange improvements. The funding sources include \$7,200,000 in Local Sales Tax funds in 2014 for the local match, and \$92,800,000 in State-administered Federal funds through the TWORKS program. However, based on the revised construction estimate and projected use of additional state funds, the local match portion is now estimated at \$11,200,000. Staff has updated the Local Sales Tax fund long term forecast that was originally included in the 2011-2020 CIP. With favorable adjustments to reflect actual bond issuances since 2012 and very modest adjusts to the sales tax revenues based on updated trends, the additional \$4,000,000 in local funds can be financed. The total requested ordinance amount is \$104,000,000, for construction, construction engineering, and design team reviews and approvals throughout construction.

An additional \$1,620,000 in water utility funding is available in the current CIP for proposed waterline improvements. Separate funding for sanitary sewer improvements in the amount of \$1,364,000, was approved on February 5, 2013. These additions bring the total project budget to \$106,984,000.

Project Budget Detail

Funding Source	Amount
Local Sales Tax	\$11,200,000
Federal Funding	\$92,800,000
Total Ordinance Amount	\$104,000,000
Water Utility	\$1,620,000
Sewer Utility (previously approved)	\$1,364,000
Total Project Budget	\$106,984,000

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Action: It is recommended that the City Council approve the budget, place the ordinance on first reading, and authorize the necessary signatures. State and Federal funding administered through the Kansas Department of Transportation will require standard agreements to be signed throughout the course of the project. In addition, design needs may require the acquisition and granting of easements, the signing of utility relocation agreements and compensation for the same, and the signing of required permits and compensation for the same.

Attachment: Budget sheet and ordinance.

132019

First Published in the Wichita Eagle October 25, 2013

ORDINANCE NO. 49-589

AN ORDINANCE DECLARING **KELLOGG, BETWEEN CYPRESS AND WIEDEMANN (472-85031)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 12-685 provides that the governing body of any city shall have the power to designate and establish by ordinance any existing or proposed street, boulevard, avenue, or part thereof to be a main trafficway, the main function of which is the movement of through traffic between areas of concentrated activity within the city, and

WHEREAS, K.S.A. 12-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. 12-685 et seq., and

WHEREAS, K.S.A. 12-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. 12-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large from the general improvement fund, general revenue fund, internal improvement fund, or any other fund or funds available for such purpose or by the issuance of general improvement bonds.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That **Kellogg, between Cypress and Wiedemann (472-85031)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. 12-685.

SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **Kellogg, between Cypress and Wiedemann (472-85031)** as a main trafficway in the following particulars:

The construction engineering and construction of a roadway as necessary for a major traffic facility.

SECTION 3. The cost of the above described improvement is estimated to be **One Hundred Four Million Dollars (\$104,000,000)** exclusive of the cost of interest on borrowed money, with \$11,200,000 paid by Local Sales Tax Funds and \$92,800,000 paid by Federal Transportation Funds. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. 12-689.

SECTION 4. The above described main trafficway improvements shall be made in accordance with the Plans and Specifications prepared under the direction of the City Engineer of the City of Wichita and approved by the governing body of the City of Wichita, Kansas. Said plans and specifications are to be placed on file in the office of the City Engineer.

SECTION 5. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

SECTION 6. Be it further ordained that the improvements described herein are hereby authorized under the provisions of K.S.A. 12-685 et seq.

SECTION 7. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2013.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW

Project Request

☒ CIP ☐ Non-CIP

CIP YEAR:

2014

CIP #:

☐ NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities

DIVISION: Engineering

RESOLUTION/ORDINANCE #: 49-

ENGINEERING REFERENCE #: 472-85031

FUND: 400 Street Improvements

SUBFUND: 400 Freeways

COUNCIL DISTRICT: 02 Council District 2

DATE COUNCIL APPROVED: Oct 8, 2013

REQUEST DATE:

PROJECT #: 401511

PROJECT TITLE: Kellogg & Webb/KTA Construction

PROJECT DETAIL #: 01

PROJECT DETAIL DESCRIPTION: Kellogg & Webb/KTA Construction

OCA #: 705011

OCA TITLE: Kellogg & Webb/KTA Construction

PERSON COMPLETING FORM: Joni Chamberlain

PHONE #: 268-4548

PROJECT MANAGER: Shawn Mellies

PHONE #: 268-4632

☒ NEW BUDGET ☐ REVISED BUDGET

REVENUE

Object Level 3	Budget
9727 GO LST	\$11,400,000.00
8062 Federal pass thru State	\$92,600,000.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

REVENUE TOTAL: \$104,000,000.00

EXPENSE

Object Level 3	Budget
2999 Contractuals	\$104,000,000.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00

EXPENSE TOTAL: \$104,000,000.00

NOTES:

OCA and PPN are already activated in Performance.

SIGNATURES REQUIRED

DIVISION HEAD: _____

DATE: _____

DEPARTMENT HEAD: _____

DATE: _____

BUDGET OFFICER: _____

DATE: _____

CITY MANAGER: _____

DATE: _____

Print Form

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
(District VI)

INITIATED BY: Metropolitan Area Building and Construction Department

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On August 27, 2013, a report was submitted with respect to the dangerous and unsafe conditions on the property listed below. The City Council adopted a resolution providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on October 8, 2013.

Analysis: On August 5, 2013, the Board of Building Code Standards and Appeals (BBCSA) held a hearing on the property listed below:

Property Address
a. 1547 N Burns

Council District
VI

Detailed information/analyses concerning the property are included in the attachments.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Metropolitan Area Building and Construction Department Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of Federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits MABCD expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of MABCD's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Legal Considerations: The resolutions and notices of hearing have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BBCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of October 8, 2013; (2) the structures have been secured as of October 8, 2013, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of October 8, 2013, and will be so maintained during renovation.

If any of the above conditions are not met, the Metropolitan Area Building and Construction Department will proceed with demolition action and also instruct the City Clerk to have the resolutions published once in the official city paper and advise the owner of these findings.

Attachments: Memorandums to Council, case summaries, and resolution.

DATE: September 20. 2013

CDM SUMMARY

COUNCIL DISTRICT # VI

ADDRESS: 1547 N BURNS

LEGAL DESCRIPTION: LOTS 9 AND 11, COX'S ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one and one-half story frame dwelling about 30 x 26 feet in size. Vacant for 9 months, this structure has cracking and shifting basement walls; rotted and missing hardboard and wood shingle siding; badly worn, composition roof, with missing shingles; badly deteriorated front porch; badly deteriorated wood carport; and the 12x18 foot accessory garage and 15x7 foot shed are deteriorated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Director of Metropolitan Area Building and Construction Department
Enforcing Officer

Date

DATE: September 20, 2013

BCSA GROUP # 2

ADDRESS: 1547 N BURNS

ACTIVE FIELD FILE STARTED: June 25, 2009

NOTICE(S) ISSUED: Since June 25, 2009 a notice of improvements and several violation notices have been issued. The case was in neighborhood court in September and October 2012, at which time the owner vacated the property. In March 2013 the court case was closed in order for formal condemnation action to be pursued.

PRE-CONDEMNATION LETTER: November 20, 2012

TAX INFORMATION: The taxes are current.

COST ASSESSMENTS/DATES: None – pending assessments for nuisance abatement and weed mowing.

PREMISE CONDITIONS: There are tall weeds, volunteer trees, and tree limbs on the premises.

VACANT NEGLECTED BUILDING REPORT: None

CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: Nuisance abatement by City contractor on May 1, 2013 at a cost of \$634.56 and tall weeds abatement of front yard by City contractor on August 26, 2013 at a cost of \$122.50.

POLICE REPORT: Pending report.

FORMAL CONDEMNATION ACTION INITIATED: June 20, 2013

RECENT DEVELOPMENTS: House is secure. No repairs have been made to the structure. Abated in May by City contractor and mowed in August by City contractor.

HISTORIC PRESERVATION REPORT: No impact.

OWNER'S PAST CDM HISTORY: None

BOARD OF B. C.S. &A. RECOMMENDATION: At the August 5, 2013 BBCSA hearing, no-one appeared to represent the property. Board Member Harder made a motion to submit the property to the City Council with a recommendation of condemnation, with ten days to begin and ten days to complete wrecking the structure. Board Member Willenberg seconded the motion. The motion was approved.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL OCTOBER 8, 2013**

- a. 2013 Sanitary Sewer Reconstruction Phase 9 (north of 21st St N, west of Hillside) (468-84906/620647/663022) Traffic to be maintained during construction using flagpersons and barricades. (District I) - \$475,000.00
- b. Lateral 539, Southwest Interceptor Sewer to serve DeWitt 5th Addition (south of Harry, east of Hoover) (468-84855/744355/480047) Does not affect existing traffic. (District IV) - \$17,000.00

To be Bid:

September 27, 2013

PRELIMINARY ESTIMATE of the cost of:

2013 Sanitary Sewer Reconstruction Phase 9
(north of 21st St. N, west of Hillside)

All work done and all materials furnished to be in accordance with plans and specifications
on file in the office of the City Engineer.

LUMP SUM BID ITEMS

1	Pipe, SS 8"	2,434	lf
2	Pipe Removed (8")	2,434	lf
3	Service Connection Repl (Reloc)	1	ea
4	MH, Adjust to Grade (< 6")	2	ea
5	MH, Adjust to Grade (6" to 12")	2	ea
6	MH, Adjust to Grade (12" to 16")	1	ea
7	MH Frame & Cover, Replaced	10	ea
8	MH, Bench & Invert Rem & Replaced	4	ea
9	MH, Outside Drop Constructed	4	ea
10	Conc Drive Rem & Repl (Parking Lot)	9	lf
11	Conc Pvmnt Rem & Repl (incl curb & gutter)	72	lf
12	Fill, Flowable	72	lf
13	Site Clearing	1	LS
14	Site Restoration	1	LS

MEASURED QUANTITY BID ITEMS

15	Service Reconnection, Sewer (4")	58	ea
16	Service Reconnection, Sewer (6")	1	ea
17	Fence Removed & Reset (Conc Base)	240	lf
18	BMP, Construction Entrance	4	ea
19	BMP, Curb Inlet Protection	1	ea
20	BMP, Back of Curb Protection	80	lf
21	BMP, Silt Fence	20	lf
22	BMP, Erosion Control Mat	120	sy

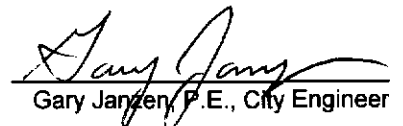
Construction Subtotal

Engineering & Inspection
Administration
Publication

Total Estimated Cost**\$475,000.00**

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.


Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____
(DATE)

City Clerk

663022 (620647) 468-84906

Page _____

EXHIBIT

To be Bid:

September 27, 2013

PRELIMINARY ESTIMATE of the cost of:

Lateral 539, Southwest Interceptor Sewer to serve DeWitt 5th Addition
(south of Harry, east of Hoover)

All work done and all materials furnished to be in accordance with plans and specifications
on file in the office of the City Engineer.

LUMP SUM BID ITEMS

1	Pipe, SS 8"	30	lf
2	Air Testing, SS Pipe	30	lf
3	MH, Standard SS (4')	1	ea
4	Pipe Stub, 6"	1	ea
5	Seeding	1	LS
6	Site Clearing	1	LS
7	Site Restoration	1	LS

MEASURED QUANTITY BID ITEMS

8	BMP, Construction Entrance	1	ea
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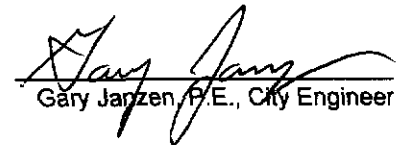
Construction Subtotal

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost\$17,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.


Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____
(DATE)

City Clerk

480047 (744355) 468-84855

PageEXHIBIT

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Community Events – Turkey Trot 10 Mile and 2 Mile Race (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure, the event promoter Trevor Darmstetter, GoRun Wichita is coordinating the Turkey Trot 10 Mile and 2 Mile Race with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Turkey Trot 10 Mile and 2 Mile Race November 24, 2013 8:00 am – 12:00 pm

- Sim Park Drive, Stackman Drive to Murdock Street
- Stackman Drive, Sim Park Drive to Central Avenue
- McLean Boulevard, Seneca Street to Meridian Avenue – westbound lanes only

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring of off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing Certificate of Liability Insurance on file with the Community Events Coordinator.

**City of Wichita
City Council Meeting
October 8, 2013**

TO: Mayor and City Council

SUBJECT: Hold Harmless Agreement (Easement Encroachment) (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the Hold Harmless (Utility Easement Encroachment) Agreement.

Background: Kolbee Enterprises LLC, was provided permits to construct improvements on Lot 1, Kia Addition within the City's utility easement with the condition that they sign a Hold Harmless Agreement.

Analysis: Constructing the proposed improvements within the easement prevents impediments to business traffic through the parking lots and driveways of the new commercial development. The agreement allows Kolbee Enterprises, the approval to construct fencing, signage, parking, light poles and conduit, on, over, and across a utility easement, located within Lot 1, Kia Addition, and waives all rights of action in law arising out of the encroachment into the easement. The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of any future sanitary sewer line or any other infrastructure owned by the utility and from claims resulting from maintenance, replacement or upgrade of lines, manholes, and/or other department property in the easement.

Financial Considerations: There are no costs to the City.

Legal Considerations: The Law Department has reviewed and approved the Hold Harmless Agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachment: Hold Harmless Agreement with Exhibits A and B.

HOLD HARMLESS AGREEMENT

This AGREEMENT made this ____ day of _____, 2013, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" AND KOLBEE ENTERPRISES LLC, hereinafter called "OWNER".

WITNESSETH:

Whereas, the public has been granted a utility easement as shown on the attached Plat of Lot 1 Kia Addition to Wichita, Sedgwick County, KS (Exhibit A)

and

Whereas, Party of the Second Part desires to occupy and construct improvements over the described section of said easement to wit; 1) Fencing along the north and west property lines, 2) Signage located as shown, 3) Parking lot over the entire utility easement, 4) Light poles as shown, 5) Conduit between the light poles and the signage, hereinafter referred to as **Tract "A"** (see attached **Exhibit B** showing encroachment and location).

NOW THEREFORE, in consideration of the premises and several mutual and reciprocal promises of the parties, it is agreed as follows:

- 1) The City hereby agrees to permit the Owner to occupy the encroachments as described above and shown in **Exhibit B**, over and across the aforesaid utility easement.
- 2) The Owner agrees that it will not construct additional improvements, on, over and across the said easement without first obtaining the City's approval of any and all plans and specification for such improvements.
- 3) In the event that a sanitary sewer line, storm sewer line or other structure within the above described utility easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the Owner shall be obligated to either (a) pay the costs to replace that said portion of the structure within such encroachment; (b) remove the said encroachment and clear the said easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the structure.

- 4) The Owner agrees to protect and indemnify the City and adjacent property owners against any increased cost that may accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over, and across said easement. In the event the Owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner to Owner. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.
- 5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from leaking, cave-in or failure of said structures with Tract "A" and which injury and/or damage is caused by the presence of the encroachment into Tract "A". The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the structures within the above described easement.
- 6) The agreement may be terminated by the City upon failure of the Owner to comply with all of the terms of this agreement.
- 7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structures contemplated by this agreement are in existence.
- 8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 16-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

Kolbee Enterprises LLC

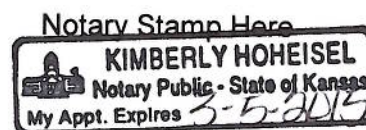
Les Eck
Les Eck
 Printed Name of Signature

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 4th day of September, 2013, before me a Notary Public in and fore said county and state came Les Eck, to me personally know to be the person who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my mane and affixed my official seal, the day and year last written.

Kimberly Hoheisel
 Notary Public
 My Commission Expires: 3-5-2015



City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: United States Geological Survey (USGS) Surface Water Agreement
October 1, 2013 through September 30, 2014 (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the Joint Funding Agreement.

Background: In 1957, as a condition of Federal assistance in construction of the Wichita-Valley Center Flood Control Project, the City of Wichita entered into a cooperative agreement with the United States Geological Survey (USGS) to install and maintain stream recorders along the project. Rainfall recorders were added later for the City's own use.

Analysis: The Department of Public Works & Utilities uses stream recorders to monitor drainage basins affecting Sedgwick County to determine incoming river flow rates, stream elevations, and Cheney Reservoir Lake elevations. This collected data is transmitted to the National Weather Service, which transmits the data to the River Forecast Center in Tulsa, Oklahoma. The data is statistically analyzed and published by USGS.

Financial Considerations: The agreement requires the City to pay \$46,736 of the \$78,700 total program cost, with USGS responsible for \$27,164 and the United States Army Corps of Engineers being responsible for \$4,800. Budget for the City's cost is split between the Production & Pumping Division (\$20,150) and Wichita-Sedgwick County Flood Control (\$26,586). These funds have been allocated in the appropriate operating budgets.

Legal Considerations: The agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Joint Funding Agreement and authorize the necessary signatures.

Attachments: Cost Distribution Sheet and Joint Funding Agreement.

Public Works & Utilities – Water, streamflow-gaging stations:

		USGS	Tulsa COE	Wichita	FY13 Cost
7144780	NF Ninnescah River above Cheney Reservoir	\$5,206		\$8,494	\$13,700
7144790	Cheney Reservoir near Cheney	1,938		3,162	5,100
7144795	NF Ninnescah River at Cheney Reservoir	5,206		8,494	13,700
Total Water Utilities		12,350		20,150	32,500

Public Works & Utilities – Stormwater, streamflow-gaging stations:

7144470	Cowskin Creek at 29th Street North of Wichita	\$1,020		\$4,080	\$5,100
7144485	Cowskin Creek at Maple Street	5,206		8,494	13,700
7144550	Arkansas River at Derby	3,382	\$4,800	5,518	13,700
7144486	Calfskin Creek at 119th St	5,206		8,494	13,700
Rating Verification measurements - 10 sites					0
Total SWU - Flood Control		\$14,814	\$4,800	\$26,586	\$46,200
Total Program FY13		27,164		46,736	78,700
Total Program FY12		28,540	4,800	45,360	78,700

Form 9-1366
(Aug. 2013)

U.S. Department of the Interior
Geological Survey

Joint Funding Agreement

FOR
STREAMGAGING

Customer #: 6000001375
Agreement #: 14C4KS000200000
Project #: SE00A0U
TIN #: 48-6000653
Fixed Cost YES
Agreement

THIS AGREEMENT is entered into as of the, 1ST day of OCTOBER, 2013 by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CITY OF WICHITA, KANSAS, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation STREAMGAGES AT SEVEN SITES AND MISCELLANEOUS SERVICES herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of \$0.00
 - (a) by the party of the first part during the period

Amount	Date	to	Date
\$27,164.00	OCTOBER 1, 2013		SEPTEMBER 30, 2014
 - (b) by the party of the second part during the period

Amount	Date	to	Date
\$46,736.00	OCTOBER 1, 2013		SEPTEMBER 30, 2014
 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

9-1366 (Continuation)

Customer #:

6000001375

Agreement #:

14C4KS000200000

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement of the cooperative relations between the parties.
9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered QUARTERLY. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).
10. During the course of this jointly planned activity and partnership, USGS may provide unpublished USGS data or information to your agency for review. In accepting the unpublished data or information, your agency agrees to be bound by the USGS non-disclosure policy for unpublished USGS work products. Guidance concerning USGS's non-disclosure policy is explained in USGS Fundamental Science Practices (<http://www.usgs.gov/fsp/policies.asp>).

**U.S. Geological Survey
United States
Department of the Interior**

USGS Point of Contact

Name: Brian Loving
Address: 4821 Quail Crest Place
Lawrence, KS 66049
Telephone: 785-832-3516
Email: bloving@usgs.gov

Signature and Date

Signature and
Date:

Name: Andrew C. Ziegler
Title: Director, KS WSC

**City of Wichita
Department of Public Works**

Customer Point of Contact


Name: Carl Brewer
Address: 455 North Main
Wichita, KS 67202
Telephone: 316-268-4498
Email:

Signature and Date

Signature and
Date:

Name: Carl Brewer
Title: Mayor City of Wichita

APPROVAL AS TO FORM:


Gary Rebenstorf
Director of Law

**City of Wichita
City Council Meeting
October 8, 2013**

TO: Mayor and City Council

SUBJECT: Change Order No. 1 for Improvements to L.W. Clapp Memorial Golf Course (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Authorize an exception to Administrative Regulation (AR) 6.8 and approve the change order.

Background: L.W. Clapp Memorial Golf Course was acquired by the City in 1954. The existing clubhouse was built in 1978 and has since undergone only minor interior improvements and exterior repairs. The 2011-2020 Adopted Capital Improvement Program includes a project to improve five municipal golf courses, including L.W. Clapp. On May 7, 2013, the City Council approved a construction contract with Sky Construction Company, Inc. in the amount of \$118,495. The improvements currently being undertaken include interior restrooms American with Disabilities Act (ADA) upgrades and renovations as well as total replacement of the roofing and siding on the L.W. Clapp clubhouse.

Analysis: Removal of exterior siding on the L.W. Clapp clubhouse has revealed structural deficiencies which were not visually evident during the design phase. Window frames and surrounding elements were found to be rotten and unstable. Additionally, the existing windows are not insulated and are exceptionally large compared to the size of the clubhouse, which leads to excessive heat gain in the summer months and heat loss in the winter months. It is proposed that the frames be rebuilt and the existing windows be replaced with more appropriately sized, insulated windows. Replacing the windows, frames, and associated elements will ensure proper functionality and stability, as well as increase energy efficiency. A change order has been prepared to authorize the additional work.

Financial Considerations: The total cost for the additional work is \$24,600, bringing the revised contract amount to \$143,095. This change order represents 20.76% of the original contract amount. AR 6.8 limits such change orders to 10% of the original contract amount. It is requested that the City Council waive the 10% limit for this change order. Funding is available within the existing approved budget, which is funded by General Obligation bonds.

Legal Considerations: The Law Department has reviewed and approved the policy exception request in support of this change order. The change order amount is within the 25% maximum set by Charter Ordinance 198, but is in excess of the 10% threshold established under AR 6.8.

Recommendation/Action: It is recommended that the City Council authorize an exception to AR 6.8, approve the change order, and authorize the necessary signatures.

Attachment: Change Order No. 1.



To: Sky Contracting Company, Inc
P.O. Box 782137, Wichita KS 67278
Change Order No.: One (1)
Purchase Order No.: 340368
CHARGE TO OCA No.: 785994

Project: L.W. Clapp Golf Course Re-
roofing, Re-siding and Restrooms Remodel
Project No.: 440154
OCA No.: 785994
PPN: N/A

Please perform the following extra work at a cost not to exceed \$ 24,600.00

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 3 weeks for approval.

Additional Work:

1. Demolish existing exterior windows (wood framed 8' high, 2 sets)
2. Build out new sets of windows per drawing provided by Spangenberg Phillips Tice Architecture (Project Architects) dated 06/30/2013. Work to include:
 - a. Insulated glass
 - b. New framing, Insulation, interior sheetrock
 - c. Interior sheetrock to include a spot repair around the light on the ceiling in the large eating area
 - d. New siding to match the new re-siding being executed on rest of building

Reason for Additional Work:

1. During the re-siding work being executed now, the window frames and other structural elements around these windows were found to be rotten and structurally deficient.
2. The current windows are not insulated and too big; leading to excessive heat gain in summer and excessive heat loss in winter. This redesign would right size and insulate the windows.
3. The project bid came in substantially under budget, giving room for this necessary upgrade and repair.

Line #	Item	Bid/Negot'd	Qty	Unit Price	Extension
1.	Demolish existing exterior Windows (wood framed 8' high, 2 sets)				
2.	Build out new sets of windows per drawing provided by Spangenberg Phillips Tice Architecture (Project Architects) dated 06/30/2013	Negot'd	LS	\$24,600.00	\$24,600.00
Total					\$24,600.00

CIP Budget Amount: \$170,000.00

Consultant: Spangenberg Phillips Tice architecture
Exp. & Encum. To Date: \$117,794.37
CO Amount: \$24,600.00
Unencum. Bal. After CO: \$52,205.63

Original Contract Amt.:\$118,495.00

Current CO Amt.: \$24,600.00
Amt. of Previous CO's: \$0
Total of All CO's: \$24,600.00
% of Orig. Contract / 10% Max.: 20.76%
Adjusted Contract Amt.:\$143,095.00

Recommended By:

Rick Stubbs
Program Manager

Date

Approved:

Contractor

Date

Approved as to Form:

Gary Rebenstorf
Director of Law

Date

Approved:

Jay Newton
Fleet and Facilities Supt

Date

Approved

Alan King
Director of Public Works & Utilities

Date

By Order of the City Council:

Carl Brewer
Mayor

Date

Attest: _____
City Clerk

CITY OF WICHITA
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Relocation of Outdoor Advertising Structure for the Improvement of the Kellogg Avenue (US Highway 54) from Cypress to Chateau (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On February 8, 2011, the City Council approved the design for the improvement of Kellogg Avenue (US Highway 54) from Cypress to Chateau. The project calls for the improvement of Kellogg to a six lane, limited access highway with one way frontage roads on each side of the highway and interchanges at the intersections of Webb Road and the Kansas Turnpike (Interstate Highway 35). The project will require the acquisition of all or part of approximately 32 parcels. The properties consist of a mix of retail and commercial uses. Additionally, there are several outdoor advertising structures that must be removed or relocated. One of these belongs to Clear Channel Outdoor, Inc. and is located at 10901 East Kellogg.

Analysis: Clear Channel Outdoor has an outdoor advertising structure located at 10901 East Kellogg on a tract acquired by the City for the project. This structure is located on part of the property that is required for highway construction and needs to be relocated out of the right of way. Pursuant to the Uniform Act, the City is required to pay for the cost to relocate the sign. The cost to move the structure has been estimated at \$92,150. This amount was offered to Clear Channel Outdoor and accepted. The remnant of the tract may provide a suitable relocation site for the structure. If it is so used, Clear Channel will lease as sign site and pay the City the greater of \$13,500 per year or 11% of gross revenues. Clear Channel will be responsible for getting all required approvals and relocating the sign.

Financial Considerations: A budget of \$93,150 is requested. This includes \$92,150 for sign relocation and \$1,000 for the administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the relocation agreement/lease as to form.

Recommendation/Action: It is recommended that the City Council; 1) approve the budget; 2) approve the outdoor advertising sign relocation agreement/lease; and 3) authorize the necessary signatures.

Attachments: Aerial map and outdoor advertising sign relocation agreement/lease.

OUTDOOR ADVERTISING SIGN RELOCATION AGREEMENT/LEASE

THIS AGREEMENT, Made and entered into this 20th day of September, 2013 by and between Clear Channel Outdoor, Inc., a Delaware corporation, party of the First Part, hereinafter referred to as "Clear Channel," whether one or more, and the City of Wichita, a municipal corporation, party of the Second Part, hereinafter referred to as "City," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. Clear Channel does hereby agree to relocate, as required by the City the one (1) outdoor advertising structure located at 10901 East Kellogg, Wichita, Kansas (KDOT sign number 004809) off of property the City acquired for the expansion of Kellogg (US Highway 54). The land acquired is more fully described as follows:

A tract beginning at a point on the South line of U.S. Highway 54, 181.40 feet West of the East line of the West Half of the Northeast Quarter of the Northeast Quarter (W/2, NE/4, NE/4) of Section Twenty-eight (28), Township Twenty-Seven (27) South, Range Two (2) East of the 6th P.M. in Sedgwick County, Kansas; thence South parallel with the East line of the West half of the Northeast Quarter of the Northeast Quarter (W/2, NE/4, NE/4), 125.40 feet; thence West parallel with the South line of said Highway, 300.00 feet (described), 302.33 feet (calculated); thence North with a deflection angle to the right of 90 degrees 17' 00", 125.07 feet to a point on the South line of said Highway; thence East along the South line of said Highway, 300.00 feet (described), 301.99 feet (calculated), to the point of beginning.

2. The City hereby agrees to pay to Clear Channel, as consideration for the relocation and removal of the outdoor advertising structures located on the above-described real property, Ninety-two Thousand One Hundred and Fifty Dollars and Zero Cents (\$92,150.00) to relocate said structure to a new location. This payment shall be in full satisfaction of all claims that Clear Channel may assert against the City pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.
3. The City shall allow the outdoor advertising structure to remain in place until its removal is required for the improvement of Kellogg (US Highway 54) and associated frontage roads, utilities, etc. The City shall give Clear Channel a minimum of sixty (60) days notice of the necessity to remove a structure. It is understood and agreed that if a structure is not removed in a timely manner after receipt of notice, the structure can be removed and disposed of by the City without further notice or recourse. Clear Channel shall have the right to remove the structure at any time.
4. The City agrees to allow Clear Channel to relocate the structure onto City-owned land outside the highway right-of-way at 10851, 10909, or 10929 East Kellogg (collectively, the "Relocation Site"), assuming there is location available at said addresses that meets the various code and siting requirements for outdoor advertising structures.
5. If the structure is relocated to the Relocation Site, Clear Channel and the City agree to

enter into a lease agreement. Terms of said agreement include, but are not limited to, a base rent for a digital sign of Thirteen Thousand Five Hundred Dollars and Zero Cents (\$13,500.00) per year or eleven (11) percent of revenues, whichever is greater. The term of the new lease shall be thirty (30) years. Base rent shall increase ten (10) percent every five years, except percentage rent, if any, shall not increase over the term of the lease. And the parties shall mutually agree upon a rental amount if Clear Channel elects at any time, in its sole discretion, to install a static face sign.

6. Clear Channel shall be responsible for carrying such insurance as is reasonable on the outdoor advertising structure up until the date of removal. Clear Channel hereby agrees and covenants to indemnify and hold harmless the City from any and all actions and claims of whatever kind or nature might arise as a result of removal of the structure.

7. Clear Channel shall be responsible for personal property taxes associated with the structure. Should Clear Channel's use of the property be determined to fall outside the scope of those uses set forth in K.S.A. 79-254, and amendments thereto, and causes a loss of the tax exempt status for the property, Clear Channel shall be responsible for any taxes and other fees and assessments assessed on the leased property that result.

8. Upon execution, this agreement shall serve to cancel the lease dated May 3, 2010 between Carport LLC and Clear Channel Outdoor, Inc. for the property at 10901 E. Kellogg and allow the removal of Clear Channel Outdoor, Inc. as a party in the eminent domain action, Case No. 13 CV 906

9. A duly executed copy of this Agreement shall be delivered to the parties hereto.

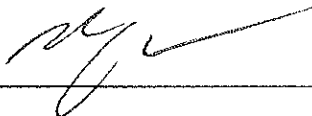
10. It is understood and agreed between the parties hereto that time is of the essence of this contract and that this transaction shall be consummated on or before September 30, 2013.

WITNESS OUR HANDS AND SEALS the day and year first above written.

City of Wichita
By Direction of the City Council

Carl Brewer, Mayor

Clear Channel Outdoor, Inc.



ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



10901 E Kellogg



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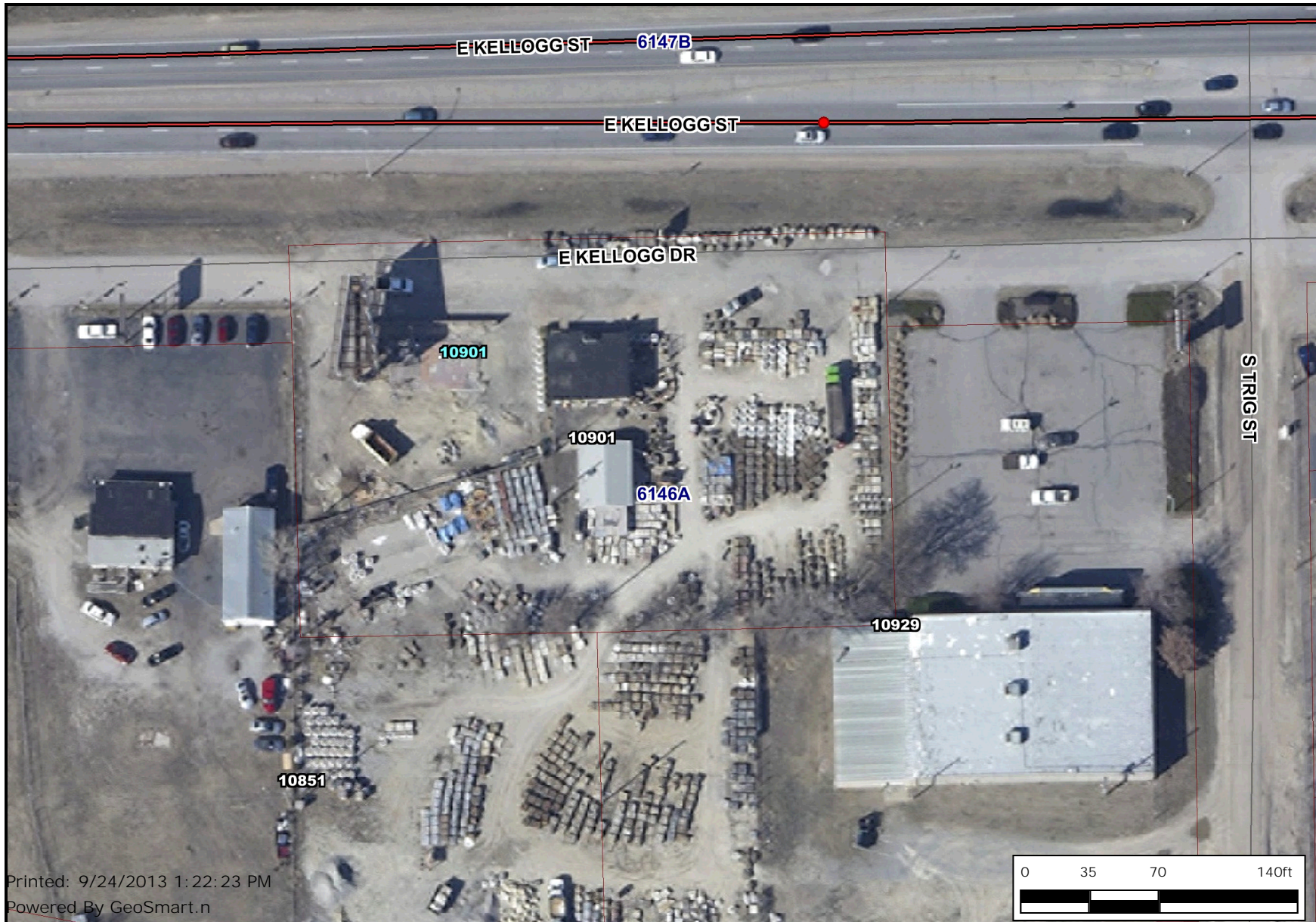
Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



- Identified Features
- Property parcels
- Roads
- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- SDERASTER.S-DEDATA.ORTH-01FT
- SDERASTER.S-DEDATA.ORTH-0
- City Limits
- Andale
- Bel Aire
- Bentley
- Cheney
- Clearwater
- Colwich
- Derby
- Eastborough
- Garden Plain
- Goddard
- Haysville
- Kechi
- Maize
- Mount Hope



10901 E Kellogg



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10901 E Kellogg



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CITY OF WICHITA
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 6601 West 21st Street North for the Amidon, 21st Street North to 29th Street North Improvement Project (District VI)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On March 20, 2012, the City Council approved the design concept to improve Amidon Street between 21st Street North and 29th Street North. The project will require a partial acquisition of 30 properties together with the full taking of two additional properties. The tracts within the project corridor consist of commercial and residential. The proposed road improvement project includes widening Amidon to provide a continuous center turn lane, and the intersections at 21st Street, 25th Street and 29th Street will be reconstructed. The proposed partial acquisition of 6601 West 21st Street North consists of 32 square feet for road right-of-way. The improvements are not affected by the proposed project.

Analysis: The proposed acquisition has an estimated valuation of \$400, or \$12.50 per square foot. This amount was offered to the owner. Through negotiation, the owner agreed to accept \$600, or \$18.75 per square foot.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of \$800 is requested. This includes \$600 for the acquisition and \$200 for title work, closing costs and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the real estate agreement; 2) approve the budget; and 3) authorize the necessary signatures.

Attachments: Real estate agreement, tract map and aerial map.

PROJECT: Amidon – 21st Street to 29th Street

DATE:

CITY/COUNTY: Wichita/Sedgwick

TRACT NO.: 1

CITY OF WICHITA, KANSAS
A MUNICIPAL CORPORATION

CONTRACT FOR CONVEYANCE
OF REAL ESTATE BY WARRANTY DEED
AND TEMPORARY EASEMENT

THIS AGREEMENT made and entered into this 9 day of Sept, 2013 by and between:

Martin B. Gow and John M. Gow, "Landowner(s)", and the City of Wichita, State of Kansas, "City"

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey unto the City, their duly authorized agents, contractors and assigns the right to enter upon the following described land in Sedgwick County to wit:

That part of Government Lot 2, Section 7, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at a point 50.00 feet south and 70.00 feet east of the northwest corner of said Government Lot 2; thence east parallel with the north line of said Government Lot 2, 8.00 feet; thence southwesterly, 11.14 feet to a point 58.00 feet south and 70.00 east of said northwest corner; thence North parallel with the west line of said Government Lot 2, 8.00 feet to the place of beginning.

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City.

The City agrees to purchase the above described real estate, and to pay therefore, below described amount on or before September 30, 2013. Landowner shall surrender possession at closing.

Landowner shall remove all personal property prior to closing. Any personal property remaining in or upon said property after closing shall be considered abandoned. The City may dispose of any remaining personal property in any way it deems without further compensation to Landowner.

All taxes, rents, insurance premiums, etc. shall be prorated at closing. All closing fees and costs are to be paid by the City.

Real property to be acquired as right of way: 32 Sq. Ft.

\$ 600.00

Temporary construction easement: N/A

N/A

Rev. 9-94
Form No. 1716

*Make check out for 600.00
to John Marcus Gow*

D. O. T.

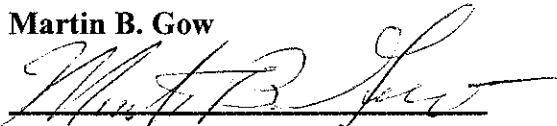
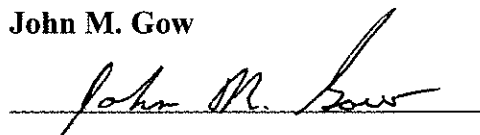
Cost to cure items

N/A

TOTAL \$ 600.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out including claims that Landowners may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNER:**Martin B. Gow****LANDOWNER:****John M. Gow****BUYER:**

City of Wichita, KS, a municipal corporation

Carl Brewer, Mayor**ATTEST:**

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, Director of Law



A 086790079

1981 W 21st St N



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Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
October 8, 2013

TO: Mayor and City Council

SUBJECT: Acquisition of Outdoor Advertising Sign Leasehold and Relocation the Outdoor Advertising Sign at 511 South Webb for the Improvement of the Kellogg Avenue (US Highway 54) from Cypress to Chateau (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On February 8, 2011, the City Council approved the design for the improvement of Kellogg Avenue (US Highway 54) from Cypress to Chateau. The project calls for the improvement of Kellogg to a six lane, limited access highway with one way frontage roads on each side of the highway and interchanges at the intersections of Webb Road and the Kansas Turnpike (Interstate Highway 35). The project will require the acquisition of all or part of approximately 32 parcels. The properties consist of a mix of retail and commercial uses. Additionally, there are several outdoor advertising structures that must be removed or relocated. One of these belongs to Starboards, LLC. and is located at 511 South Webb Road.

Analysis: The outdoor advertising structure is located on part of the property that has been acquired for highway construction. The structure needs to be relocated out of the right-of-way. The leasehold interest held by Starboards has been included in the eminent domain action for right-of-way needed for the project. Starboards estimated the value of its leasehold interest at \$599,813. The City estimated the value at \$61,055. Additionally, pursuant to the Uniform Act, the City is required to pay for the cost to relocate the sign. The cost to move the structure has been estimated at \$100,000. After negotiation, the sign company has agreed to accept \$200,000 for the leasehold and all relocation costs. Upon approval of this agreement, the leasehold will be dropped from the eminent domain action.

Financial Considerations: A budget of \$201,000 is requested. This includes \$100,000 for the acquisition, \$100,000 for the relocation of the billboard, and \$1,000 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) approve the Budget; 2) approve the Outdoor Advertising Sign Relocation Agreement; and 3) authorize the necessary signatures.

Attachments: Aerial map and outdoor advertising sign relocation agreement.



511 S Webb, Vanderbilts



Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.



OUTDOOR ADVERTISING SIGN RELOCATION AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2013 by and between Star Boards LLC, a Kansas limited liability corporation, party of the First Part, hereinafter referred to as "Star boards," whether one or more, and the City of Wichita, a municipal corporation, party of the Second Part, hereinafter referred to as "City," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. Star boards does hereby agree to relocate, as required by the City an outdoor advertising structure off of property commonly known as 511 South Webb Road that the City acquired for the expansion of Kellogg (US Highway 54). The land acquired is more fully described as follows:

Beginning at the southeast corner of Lot 1, Davis-Moore Addition, Wichita, Kansas, Sedgwick County, Kansas; thence with an assumed bearing of S90°00'00"W on the south line of said Lot 1, a distance of 253.00 feet; thence N00°00'00"E, a distance of 124.79 feet (described), 124.73 feet (calculated), to a point 175.00 feet south of the north line of said Lot 1; thence N90°00'00"E parallel with the south line of said Lot 1, N89°59'31"E (calculated and not parallel with the south line of said Lot 1), a distance of 238.00 feet, more or less, to the intersection with the east line of said Lot 1; thence S00°00'00"W on said east line, a distance of 4.79 feet to a corner in the easterly line of said Lot 1; thence continuing on said easterly line S08°31'51"E, a distance of 101.12 feet to a corner in the most easterly line of said Lot 1; thence S00°00'00"W on said line, a distance of 20.00 feet (platted), 19.97 feet (calculated), to the point of beginning.

2. The City hereby agrees to pay to Star boards, as consideration for the relocation and removal of the outdoor advertising structures located on the above-described real property, the sum of Two Hundred Thousand and Zero Cents (\$200,000.00) in the manner following to-wit: cash at closing. This payment shall be in full satisfaction of all claims that Seller may assert pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C.A. 4601, et. Seq. as well as any claim pursuant to the eminent domain action in Case No. 13 CV0906
3. The City shall allow the outdoor advertising structures to remain in place until their removal is required for the improvement of Kellogg (US Highway 54) and associated frontage roads, utilities, etc. The City shall give Star boards a minimum of sixty (60) days notice of the necessity to remove a structure. It is understood and agreed that if a structure is not removed in a timely manner after receipt of notice, the structure can be removed and disposed of by the City without further notice or recourse. Star boards shall have the right to remove the structures at any time.
4. A duly executed copy of this Agreement shall be delivered to the parties hereto.
9. It is understood and agreed between the parties hereto that time is of the essence of this contract and that this transaction shall be consummated on or before October 31, 2013.

WITNESS OUR HANDS AND SEALS the day and year first above written.

BUYER

By Direction of the City Council

SELLER

Star Boards, LLC

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

**CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
SEPTEMBER 2013**

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Body Armor Vests (Protective)	9/30/2013	Baysinger Police Supply, Inc.	Police	10/1/2011 - 9/30/2012	1 - 1 year option
Collection of Delinquent Court Fines	9/30/2014	Gila LLC dba Municipal Services Bureau	Municipal Court	10/1/2012 - 9/30/2013	3 - 1 year options
Employee Assistance Program (EAP) Services	9/30/2014	EMPAC Inc.	Human Resources	10/1/2010 - 9/30/2011	1 - 1 year option
Environmental - Phase I Environmental Site Assessments On-Call Services - Phase II Limited Soil & Groundwater Investigations	9/16/2014	Terracon Consultants, Inc.	Airport	9/17/2012 - 8/31/2013	1 - 1 year option
Indigent Defense Legal Services	9/30/2013	Cotton & Pittman LLC	Municipal Court	10/1/2010 - 9/30/2011	2 - 1 year options
Physicals, Hazardous Materials Team Physicals	9/30/2013	Via Christi Rehabilitation Center, Inc. dba Via Christi Occupational and Immediate Care	Fire/Police/Airport/ Human Resources	10/1/2010 - 9/30/2011	Last option
Pre-Sentence Investigation Reports	9/30/2014	Correctional Counseling of Kansas	Municipal Court	9/30/2011 - 9/19/2012	2 - 1 year options
Sedgwick, Kansas Solids Handling Agreement with City of Wichita	9/30/2014	The City of Sedgwick, Kansas	Public Works & Utilities	10/1/2012 - 9/30/2013	1 - 1 year option
Trash Carts and Collection Services - Housing & Community Services	9/30/2014	Waste Management of Kansas, Inc.	Housing & Community Services	10/1/2011 - 9/30/2012	Last option
Water Heaters	9/30/2014	The Tap of Kansas, Inc.	Housing & Community Services	10/1/2011 - 9/30/2012	Last option
Wichita Intervention Program Instructor	9/30/2014	Heartstone Substance Abuse Services	Municipal Court	9/20/2011 - 9/19/2012	2 - 1 year options

**PROFESSIONAL CONTRACTS UNDER \$25,000
SEPTEMBER 2013**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		

**ANNUAL MAINTENANCE CONTRACTS OVER \$25,000
DIRECT PURCHASE ORDERS FOR SEPTEMBER 2013**

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council
SUBJECT: Contract with WAMPO for Pass-through Federal Funds (All Districts)
INITIATED BY: Wichita Transit
AGENDA: Consent

Recommendation: Authorize the Mayor to execute the contract with the Wichita Area Metropolitan Planning Organization (WAMPO).

Background: Wichita Transit was awarded competitive Federal Transit Administration (FTA) funds by the WAMPO Transportation Policy Body in September. The New Freedom (section 5317) and Jobs Access and Reverse Commute (section 5316) funds are apportioned to Urbanized Areas and are allocated on a competitive basis within the urbanized area. WAMPO is the designated recipient for the funds and held a competitive application process in July. The selection process was held in August in which Wichita Transit was recommended for funding.

Analysis: The Jobs Access and Reverse Commute (JARC) grant will provide for continued enhanced service operations including: operator wages and fuel for 30 minute service on the South Main and East Harry routes. The New Freedom grant will provide funds for a mobility manager position. The mobility manager position will manage Wichita Transit's ADA operations and contracts for purchased rides while coordinating with other service providers in the community.

Financial Consideration: The total grant amounts are \$115,828 in New Freedom funds for a mobility manager position and \$337,752 in JARC funds for enhanced services. The New Freedom funds are 100% grant supported and the JARC funds are 50% Federal (\$168,876) and 50% local match (\$168,876). The local match is budgeted in the local transit fund.

Legal Consideration: The Law Department has approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council approve the contracts and authorize the Mayor to execute the agreement.

Attachments: New Freedom contract and JARC contract

AGREEMENT FOR 49 U.S.C. § 5316 Job Access Reverse Commute (JARC) Funds

**Wichita Transit
Enhanced Services
JARC Grant Agreement (CFDA 20.516)
Project Number JARC-13-003**

THIS AGREEMENT made and entered into this 1st day of November, 2013, by and between the Wichita Area Metropolitan Planning Organization, hereinafter referred to as “**WAMPO**”, and Wichita Transit, hereinafter referred to as the “**SUB-RECIPIENT**”, acting by and through Steve Spade its duly authorized representative, whose office is located at 777 E. Waterman, Wichita, KS 67202. **WAMPO** and the **SUB-RECIPIENT** are collectively referred to as the “**PARTIES**”.

INTRODUCTION

The 49 U.S.C. § 5316 (Job Access Reverse Commute program) of the Safe Accountable Flexible and Efficient Transportation Act, a Legacy for Users (SAFETEA-LU), hereinafter referred to as the “**ACT**”, provides in part, for operating grants to eligible applicants for the specific purpose of assisting them in providing transportation to and from work activities for the general public living in rural and non-urbanized (less than 50,000 population) areas and urbanized (greater than 50,000 population) areas. The 49 U.S.C. § 5316 projects may include the transportation of rural and non-urbanized area residents to and from work activities in the urbanized areas. For this Agreement, a general public transportation provider shall provide transportation activities as required by U.S.C. § 5316.

The Governor of the State of Kansas in accordance with a request by the Federal Administration, hereinafter referred to as “**FTA**”, has designated **WAMPO** as the designated recipient of U.S.C. § 5316 funds and to evaluate, select projects, and coordinate grant applications.

The **SUB-RECIPIENT** desires to apply, secure, and utilize grant funds for the transportation needs of persons within the Wichita Urbanized Area. **WAMPO** is willing, subject to the terms of this Agreement, to provide financial assistance to the **SUB-RECIPIENT** for the undertaking of a transportation project for the general public, hereinafter referred to as “**PROJECT**”. The **SUB-RECIPIENT** expressed an interest in sponsoring the **PROJECT** within the Wichita Urbanized Area. The **SUB-RECIPIENT** has demonstrated acceptable efforts to achieve coordination with other transportation providers and users, including local private operators.

The **PARTIES**, in consideration of the mutual covenants herein set forth, agree as follows:

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of the **PROJECT** by the **SUB-RECIPIENT**. The **PARTIES** mutually agree the Agreement contains the terms, conditions, and mutual understandings of the **PARTIES** as to the manner in which the funding for operating expenses of the **PROJECT** will be undertaken and completed.

Section 2. Administration. **WAMPO** will serve as the administer of federal funds for this **PROJECT**.

Section 3. Scope of the PROJECT. The **SUB-RECIPIENT** shall undertake and complete the **PROJECT** in accordance with the terms and conditions of this Agreement and the **PROJECT** application, which is hereby incorporated in the Agreement and made a part thereof.

Under the direction of the Agreement and the **PROJECT** application, the **SUB-RECIPIENT** shall provide for the **PROJECT** under the following guidelines:

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- A. The **PROJECT** will be performed within the **SUB-RECIPIENTS** service area.
- B. The **PROJECTS** will provide transportation for the elderly, persons with disabilities, and the general public to and from work activities within the **SUB-RECIPIENT'S** area.
- C. The **SUB-RECIPIENT** will provide for the operation and management of the **PROJECT** in accordance with Exhibit G – Project Operating Budget, which is attached hereto and incorporated herein.
- D. The **SUB-RECIPIENT** shall advise WAMPO in writing of any changes in the **PROJECT**.
- E. The properties and policies for the **PROJECT** shall provide for totally accessible transportation for the elderly and the disabled to and from work activities for the duration of the project.

Section 4. Contractual Provisions. The provisions and assurances found in the approved 49 U.S.C. § 5316 **PROJECT** application submitted by the **SUB-RECIPIENT** are hereby incorporated and made a part hereof.

Section 5. Cost of Project, Funding Responsibility and Payment. The total cost for the **PROJECT** is estimated to be \$337,752 of which \$168,876 is reimbursable by **WAMPO**. The remaining \$168,876 of the cost will be provided by the **SUB-RECIPIENT**. These figures are based upon a matching ratio of 50 percent federal and 50 percent local funds for operating expenses. See Exhibit G – Project Operating Budget for the responsibilities of the **SUB-RECIPIENT**.

As described in **Section 3. Scope of the PROJECT** of this Agreement, the **SUB-RECIPIENT** will receive reimbursement from **WAMPO** for actual expenses incurred by the **SUB-RECIPIENT**, but not to exceed the amounts listed in Exhibit G – Project Operating Budget which is hereby incorporated into this Agreement.

Any **PROJECT** income derived from the **PROJECT** will be used to reduce the operating costs prior to submittal of reimbursable costs to **WAMPO**. **PROJECT** costs referred to in this Agreement shall be comprised of the allowable direct and indirect costs incidental to the performance to be determined in accordance with the standards set forth in the Code of Federal Regulations, 41 CFR 1-15.705 and 1-15.706 which are incorporated herein by reference insofar as they are applicable.

Upon receipt of the Monthly Ridership Report and the billing invoice, **WAMPO** will reimburse allowable costs as requested by the **SUB-RECIPIENT**. Reimbursement of any cost pursuant to this section shall not constitute a final determination by **WAMPO** of the eligibility of such costs and shall not constitute a waiver of any violation of the terms of this Agreement committed by the **SUB-RECIPIENT**.

Payment of reimbursable costs, as set forth in this section, is conditioned upon receipt of 49 U.S.C. § 5316 Funds by **WAMPO** for the **PROJECT** costs.

It is agreed and understood by and between the parties that any funds expended by the **SUB-RECIPIENT** in violation of **WAMPO**, local, state and/or federal laws, rules, regulations, standards, principles, policies, or the provisions of this Agreement are disallowable. In the event that such disallowable expenditures are deemed to have been reimbursed, **WAMPO** shall upon written notification to the **SUB-RECIPIENT** request adjustment or repayment of such disallowed expenditures. **SUB-RECIPIENT** shall make such adjustment or repayment within thirty (30) days from receipt of said notification. Funds declared to be provided for ineligible expenditures will be returned to **WAMPO** within thirty (30) days of determination and request for payment. **WAMPO** may withhold any payments to the **SUB-RECIPIENT** for the purposes of set off until such time as any disallowed cost is repaid.

Section 6. Local Matching Funds for Support of the PROJECT. The **SUB-RECIPIENT** shall maintain the local funding support for the operation of transportation service at the same or increased level even if there is an increase of Federal or State assistance. If any of the local match support (i.e. County, State, or Federal funds) is pulled out of a **PROJECT**, the **FTA** funds being provided in this Agreement will be withdrawn from that **PROJECT**.

Section 7. Third Party Agreement. The **SUB-RECIPIENT** shall not execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of **WAMPO**.

Section 8. Period of Performance. The **SUB-RECIPIENT** shall commence implementation of the **PROJECT** upon execution of this Agreement and upon receipt of a written "Notice to Proceed" issued by **WAMPO**. The **SUB-RECIPIENT** shall prosecute the work outlined herein to completion no later than One Year, Six Months (18 months) following the date of the Notice to Proceed. The **SUB-RECIPIENT** has until July 1st following the termination of the Agreement to seek reimbursement. All requests for reimbursement should be submitted to **WAMPO** no later than July 1st following the end of the Agreement. After that date, any unclaimed or unused funds will be retained by **WAMPO**. No funds will be carried over.

Section 9. Dun & Bradstreet. The **SUB-RECIPIENT** will obtain a D-U-N-S number (Dun & Bradstreet Number). Use the following link: http://www.dnb.com/us/duns_update/.

Section 10. System for Award Management. The **SUB-RECIPIENT** will maintain current registrations with the System for Award Management (SAM) (www.sam.gov) at all times during which they have active federal awards. This is the Official U.S. Government system that consolidates the capabilities of CCR/FedReg, ORCA, and EPLS.

Section 11. Audit. The **SUB-RECIPIENT** shall permit **WAMPO's** authorized representatives, the **FTA**, and the United States Department of Transportation (USDOT) to inspect all of the **SUB-RECIPIENT's** equipment, the books, records, and accounts of the **SUB-RECIPIENT** pertaining to the **PROJECT**. The **SUB-RECIPIENT** agrees the required financial and compliance audit as required by **WAMPO** will be completed within the prescribed audit reporting cycle. Local governments shall comply with SAFETA-LU, OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations".

Section 12. Employment of WAMPO's Employees. The **SUB-RECIPIENT** will not, without written permission from **WAMPO**, engage the services of any person or persons in the employment of **WAMPO** for any work required by the terms of this Agreement.

Section 13. Ownership of Data. All reports and documents pertaining to the **PROJECT** mentioned herein shall be prepared in accordance with **WAMPO's** standard practice and shall become the property of **WAMPO** upon the completion thereof in accordance with the terms of this Agreement, without restrictions as to their further use.

Section 14. Indemnification. The **SUB-RECIPIENT** will defend, indemnify, hold harmless, and save **WAMPO** and its authorized representatives and **FTA** from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions of performance of this Agreement, any contract entered into under this Agreement, or the operation of the vehicles described herein by the **SUB-RECIPIENT**, the **SUB-RECIPIENT's** employees, agents, or subcontractors.

Section 15. Covenant Against Contingent Fees. The **SUB-RECIPIENT** warrants it has not employed or retained any company or person, other than a bona fide employee working solely for the

SUB-RECIPIENT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the **SUB-RECIPIENT**, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WAMPO shall have the right to annul this Agreement without liability, or in his or her discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, as stated in Exhibit D, Certification of Provider and Certification of **WAMPO**, which is incorporated in this Agreement and made a part thereof.

Section 16. Changes to Agreement. No changes to this Agreement will be allowed without prior written approval by **WAMPO**. To be effective, a revision in this Agreement shall be made by an amendment to this Agreement.

Section 17. Records and Reports.

- A. Establish and Maintain Accounting Records:** The **SUB-RECIPIENT** shall establish and maintain a separate account for the **PROJECT**, either independently or within its existing accounting system, to be known as the **PROJECT** account. The **SUB-RECIPIENT** agrees to keep detailed and accurate records of all labor, material, supplies, incidentals, and any other necessary costs involved in the **PROJECT**.
- B. Retention of Records:** The **SUB-RECIPIENT** shall be required to maintain accounting records and other evidence pertaining to the costs incurred and to make the records available at their office at all reasonable times during the period of Agreement performance and for five (5) years from the date of the close of this Agreement as delineated in the **Notice to Proceed** letter. Such accounting records and other evidence pertaining to the costs incurred shall be made available for inspection by **WAMPO**, **FTA**, **USDOT**, or their authorized representatives, and copies thereof shall be furnished if requested.
- C. Reports:** The **SUB-RECIPIENT** shall advise **WAMPO** regarding the progress of the **PROJECT** at such times and in such a manner as **WAMPO** may require, including, but not limited to meetings, quarterly reports, and expenditure reports. The **SUB-RECIPIENT** shall submit to **WAMPO** such financial statements, data, records, contracts, and other documents related to the **PROJECT** as may be deemed necessary by **WAMPO**.

Section 18. Termination of Agreement. **WAMPO** has the right to terminate this Agreement by giving thirty (30) days written notice in the event **WAMPO** determines the **PROJECT** should be abandoned or indefinitely postponed; provided, however, in any case, the **SUB-RECIPIENT** shall be paid the amount due for their services rendered by the operators of the **PROJECT** up to the time of termination on the basis of the provisions of this Agreement.

WAMPO has the right to terminate this Agreement at any time, upon written notice to the **SUB-RECIPIENT**, in the event the **SUB-RECIPIENT** fails to comply with all the terms and provisions of this Agreement. The **SUB-RECIPIENT** shall be paid for expenses judged reasonable for the services rendered to the date of termination; provided in the event of termination of this Agreement, the **SUB-RECIPIENT** shall not be paid more than that which would be received under the terms of this Agreement for that portion of services rendered to the date of termination.

Either party may terminate this Agreement for cause, provided written notification is received by the other party thirty (30) days prior to the proposed termination date. In the event of termination by **WAMPO**, the **SUB-RECIPIENT** shall only be paid for all costs and uncancelable obligations incurred prior to the date of termination on the basis of the provisions of this Agreement.

The Agreement's termination shall not relieve the **SUB-RECIPIENT** of any of its obligation to **WAMPO** existing at the time of expiration, or terminate those obligations of the **SUB-RECIPIENT**, which, by their nature, survive the termination of this Agreement.

Section 19. Noncompliance with PROJECT's Application and Program. The **SUB-RECIPIENT** shall be in noncompliance with either the terms of this Agreement or each **PROJECT** application if the **SUB-RECIPIENT** misuses a vehicle. Misuse includes, but is not limited to, the following:

- A. Vehicles used for agency administrative functions, such as staff use to attend meetings, going to the bank or post office, etc.
- B. The **SUB-RECIPIENT** fails to label vehicles properly.

In the event of noncompliance by the **SUB-RECIPIENT**, **WAMPO** shall not make any payments during the term of noncompliance. The **SUB-RECIPIENT** agrees payment is due from **WAMPO** for a **PROJECT** only during the time the **PROJECT** is in compliance. Any controversy arising out of what constitutes the period of noncompliance shall be determined by **WAMPO**.

Section 20. Compliance. The **SUB-RECIPIENT** shall comply with all federal, state, and local laws, ordinances, resolutions, rules, regulations, standards, principles, policies and procedures in the implementation of the transportation service provided for in this Agreement. The **SUB-RECIPIENT** agrees to comply with all terms, provisions, and conditions which **WAMPO** is required to comply with pursuant to **WAMPO's** agreements with the **FTA**. Said terms, provisions, and conditions, including all future additions and amendments thereto, are hereby incorporated herein.

Section 21. Responsibility to Employees. The **SUB-RECIPIENT** accepts full responsibility for providing worker's compensation coverage and for payment of unemployment insurance, and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for his or her employees engaged in the work authorized by this Agreement, and will indemnify and hold harmless, **WAMPO** for the same.

Section 22. Equal Employment Opportunity. In connection with the execution of this contract, the **SUB-RECIPIENT** shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, disability, or national origin. The **SUB-RECIPIENT** shall take affirmative action to insure applicants are employed, and employees are treated during this employment, without regard to race, religion, color, age, sex, disability, or national origin. Such actions shall include, but not be limited to the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship.

Section 23. Cooperation and Coordination of Transportation. The **SUB-RECIPIENT** will continue to demonstrate acceptable efforts to achieve coordination with other transportation providers and users, including private transit and Paratransit operators and social service agencies capable of purchasing service. In connection with the performance of the **PROJECT**, the **SUB-RECIPIENT** will cooperate with **WAMPO** in meeting its commitments and goals with regard to the provision of service that will not hamper interagency cooperation and coordination of transportation services provided in their respective geographical area.

Section 24. SUB-RECIPIENT's Capabilities. The **SUB-RECIPIENT** possesses and will maintain requisite fiscal, managerial, and legal capacity to carry out the 49 U.S.C. § 5316 program and to receive and disburse federal and state funds.

Section 25. Matching Share for the PROJECT. The **SUB-RECIPIENT** agrees the designated combination of federal, state, local, private and/or in-kind funding sources has been or will be committed to provide the required matching share for the **PROJECT**.

Section 26. Civil Rights Act of 1964. The **SUB-RECIPIENT** will comply with all the requirements imposed by the Title VI and Title VII of the Civil Rights Act of 1964 (78 Sta. 252), the Regulations of **USDOT** issued thereunder (49 CFR 27, Subpart A), and the assurance by the **WAMPO** pursuant thereto. (See Exhibit E which is incorporated herein).

Section 27. Section 504 – Rehabilitation Act of 1973. The **SUB-RECIPIENT** will comply with all requirements imposed by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Regulations of USDOT issued thereunder (49 CFR 27), and the assurances by the **WAMPO** pursuant thereto.

Section 28. Disadvantaged Business. In connection with the performance of this Agreement, the **SUB-RECIPIENT** will cooperate with **WAMPO** in meeting its commitments and goals with regard to the maximum utilization of disadvantaged businesses and will use its best efforts to insure disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. The **SUB-RECIPIENT** will comply with the statements in 49 CFR 23.43, Subsections (a) and (b).

Section 29. Interest of Members of or Delegates to Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 30. Prohibited Interest. No member, officer, or employee of the **SUB-RECIPIENT** during their tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 31. Labor Protection. The **SUB-RECIPIENT** shall undertake, carry out, and complete its transportation needs under the terms and conditions determined the Secretary of the U.S. Department of Labor to be fair and equitable to protect the interests of employees affected by the **SUB-RECIPIENT** and meeting the requirements of Section 13 (c) of the Federal Transit Administration Act of 1964, as amended, referenced by the **PROJECT'S** acceptance of Special Section 13 (c) Warranty incorporated into and made part of this Agreement under Section 4, titled Contractual Provisions.

- A. The **PROJECT** shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the **PROJECT**.
- B. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.
- C. The **SUB-RECIPIENT** shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the **PROJECT**.
- D. In the event an employee is terminated or laid off as a result of the **PROJECT**, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the **SUB-RECIPIENT** shall provide or provide for such training or retraining at no cost to the employee.

Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the **PROJECT**, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as

specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971.

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the **PROJECT**" as used herein shall include events occurring in anticipation of, during, and subsequent to the **PROJECT**.

- E. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the **SUB-RECIPIENT**, their employees, and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.
- F. The **SUB-RECIPIENT** agrees any controversy respecting the **PROJECT'S** effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.
- G. The **SUB-RECIPIENT** shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of decisions called for in the preceding paragraph.
- H. The **SUB-RECIPIENT** will post, in a prominent and accessible place, a notice stating the **SUB-RECIPIENT** is a recipient of Federal assistance under the **FTA** and has agreed to comply with the provisions of 49 U.S.C., Section 54333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees.

Section 32. Lobbying. The **SUB-RECIPIENT** certifies, to the best of his or her knowledge and believe:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying", 61 Fed. Reg. 1413 (1/19/96).]
- C. The undersigned shall require the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contract under grants, loans, and cooperative agreements) and all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31

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U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The **SUB-RECIPIENT** hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the **SUB-RECIPIENT** understands and agrees the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The **SUB-RECIPIENT** acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 CFR 31, apply to its actions pertaining to each **PROJECT**. Upon execution of the underlying Agreement, the **SUB-RECIPIENT** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the **FTA** assisted **PROJECT** for which this contract work is being performed. In addition to other penalties that may be applicable, the **SUB-RECIPIENT** further acknowledges if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties for the Program Fraud Civil Remedies Act of 1986 on the **SUB-RECIPIENT** to the extent the Federal Government deems appropriate.

The **SUB-RECIPIENT** also acknowledges if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project financed in whole or in part with Federal assistance originally awarded by **FTA** under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the **SUB-RECIPIENT**, to the extent the Federal Government deems appropriate.

The **SUB-RECIPIENT** agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by **FTA**. It is further agreed the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 34. Federal Changes. The **SUB-RECIPIENT** shall at all times comply with all applicable **FTA** regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form **FTA** MA) between the **SUB-RECIPIENT** and **FTA**, as they may be amended or promulgated from time to time during the term of this Agreement. The **SUB-RECIPIENT'S** failure to so comply shall constitute a material breach of this Agreement.

Section 35. Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in **FTA** Circular 4220.1D, dated April 15, 1996, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all **FTA** mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **SUB-RECIPIENT** shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause the **SUB-RECIPIENT** to be in violation of the **FTA** terms and conditions.

Section 36. Buy America. The **SUB-RECIPIENT** agrees to comply with 49 U.S.C. § 5323(j) and 49 CFR 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in **FTA**-funded projects are produced in the United States, unless a waiver has been granted by **FTA** or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements

for rolling stock are set out in 49 U.S.C. § 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content.

Section 37. Disputes. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the authorized representative of **WAMPO** and delivered by e-mail to the **SUB-RECIPIENT**. This decision shall be final and conclusive unless within five (5) business days from the date of delivery, the **SUB-RECIPIENT** delivers a written appeal to **WAMPO**. In connection with any such appeal, the **SUB-RECIPIENT** shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of **WAMPO** shall be binding upon the **SUB-RECIPIENT** and the **SUB-RECIPIENT** shall abide by the decision.

- A. Performance During Dispute:** Unless otherwise directed by **WAMPO**, the **SUB-RECIPIENT** shall continue performance under this Agreement while matters in dispute are being resolved.
- B. Claims for Damages:** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- C. Rights and Remedies:** The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by **WAMPO** or **SUB-RECIPIENT** shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as many be specifically agreed in writing.

Section 38. \$100,000 Threshold. The **SUB-RECIPIENT** also agrees to include these following requirements in each agreement that totals may exceed \$100,000 financed in whole or in part with Federal assistance provided by **FTA**:

- A. Clean Air:** The **SUB-RECIPIENT** hereby agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The **SUB-RECIPIENT** agrees to report each violation to **WAMPO** and understands and agrees **WAMPO** will, in turn, report each violation as required to assure notification to **FTA** and the appropriate EPA Regional Office.
- B. Clean Water:** The **SUB-RECIPIENT** hereby agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.* The **SUB-RECIPIENT** agrees to report each violation to **WAMPO** and understands and agrees **WAMPO** will, in turn report violation as required to assure notification to **FTA** and the appropriate EPA Regional Office.
- C. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – (Lower Tier Covered Transaction):** The **SUB-RECIPIENT** certifies, by submission of this Agreement, neither it nor its “principals” [as defined by 49 CFR 29.105] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. If the **SUB-RECIPIENT** should be unable to certify to the statements in this certification, the **SUB-RECIPIENT** shall attach an explanation to this submitted Agreement.

Section 39. Contracts Under This Agreement. Unless otherwise authorized in writing by **WAMPO**, the **SUB-RECIPIENT** shall not assign any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of **WAMPO**.

Section 40. Contractual Provisions Attachment. The provisions found in Exhibit B Contractual Provisions Attachment, are hereby incorporated in this Agreement and made a part thereof.

Section 41. Master Agreement. The Parties to this Agreement agree the standard terms and agreements between the **FTA** and **WAMPO**, commonly referred to as "Master Agreement", as amended from time to time, are hereby incorporated into this Agreement and made a part thereof.

Section 42. Successors and Assigns. It is further understood this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon **WAMPO** and the **SUB-RECIPIENT** and their successors and assigns.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its requirements or modification.

IN WITNESS THEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

Wichita Transit

**Wichita Area Metropolitan Planning
Organization**

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Date: _____

Date: _____

City of Wichita as Fiscal Agent for WAMPO

Approved as to form:

By: _____

Carl Brewer, City of Wichita Mayor

Attest: _____

John Schlegel, WAMPO Secretary

Date: _____

Austin Parker

Attorney for the Wichita Area
Metropolitan Planning Organization

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this Agreement, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this Agreement, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present Agreement, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT B

CONTRACTUAL PROVISIONS ATTACHMENT

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said Agreement being the 1st day of November, 2013.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Finance of the City of Wichita, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, WAMPO may terminate this agreement at the end of its current fiscal year. WAMPO agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this Agreement, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year; to take possession of any equipment provided WAMPO under the Agreement. WAMPO will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by WAMPO, title to any such equipment shall revert to contractor at the end of WAMPO's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability**: Neither the WAMPO nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this Agreement understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such Agreement or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the WAMPO has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the WAMPO shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this Agreement, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this Agreement on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The WAMPO shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this Agreement.
10. **Insurance:** The WAMPO shall not be required to purchase, any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the WAMPO to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

EXHIBIT C

CERTIFICATION OF COORDINATING SUB-RECIPIENT

I hereby certify that I am the Project Manager and duly authorized representative of Wichita Transit, whose address is 777 E. Waterman, Wichita, KS 67202 and that neither I nor the above **SUB-RECIPIENT** I here represent has:

- (a) Employed or retained for the payment of a commission, percentage, brokerage, contingent fee, or other consideration, any person (other than a bona fide employee working solely for me or the above **SUB-RECIPIENT**) to solicit or secure this agreement.
- (b) Agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- (c) Paid, or agreed to pay, to any firm, organization of persons (other than a bona fide employee working solely for me or the above **SUB-RECIPIENT**) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to **WAMPO** in connection with this agreement and is subject to State and Federal laws, both criminal and civil.

(Date)

(Signature)

EXHIBIT D

CERTIFICATION OF WAMPO

I hereby certify that I represent **WAMPO** and that the above **SUB-RECIPIENT** or the **SUB-RECIPIENT's** representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the above referenced **SUB-RECIPIENT** in connection with this agreement and is subject to State and Federal laws, both criminal and civil.

(Date)

(Signature)
WAMPO

By: Kristen Zimmerman
Transportation Planning Manager

Exhibit E

CONTRACTOR ASSURANCE

Title VI Standard Terms And Conditions (Sub-Recipients)

SUB-RECIPIENT understands and agrees that the following terms and conditions apply to the Agreement entered into between **SUB-RECIPIENT** and the Wichita Area Metropolitan Area Planning Department (**WAMPO**). These terms and conditions are made a part of and are hereby incorporated into the Agreement. **SUB-RECIPIENT** further understands and agrees that failure to adhere to these terms and conditions constitutes a material breach of its Agreement with **WAMPO**, and that **WAMPO** may take the appropriate action against **SUB-RECIPIENT** to ensure compliance with these provisions, up to and including ordering a stoppage of work, suspending payments, or terminating the Agreement.

1.0 APPLICABLE TITLE VI & OTHER CIVIL RIGHTS LAWS & REGULATIONS

SUB-RECIPIENT agrees to abide by all applicable federal and state laws, regulations, orders, and directives regarding non-discrimination in federally assisted programs. These laws, regulations, orders, and directives include, but are not limited to:

1.1 Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and implementing regulations at 49 CFR Part 21 – *Nondiscrimination in Federally Assisted Programs of the Department of Transportation— Effectuation of Title VI of the Civil Rights Act*;

1.2 The equal employment opportunity provisions of 49 U.S.C. § 5332 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and implementing regulations;

1.3 Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and implementing regulations at 49 CFR Part 25 – *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*;

1.4 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*, and implementing regulations, including:

1.4.1 49 CFR Part 37—*Transportation Services for Individuals with Disabilities (ADA)*;

1.4.2 49 CFR Part 27—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance*;

1.4.3 36 CFR Part 1192 and 49 CFR Part 38—*Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles*;

1.4.4 28 CFR Part 35—*Nondiscrimination on the Basis of Disability in State and Local Government Services*;

1.4.5 28 CFR Part 36—*Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*;

1.4.6 41 CFR Subpart 101 – 119— *Accommodations for the Physically Handicapped*;

1.4.7 29 CFR Part 1630—*Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*;

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1.4.8 47 CFR Part 64, Subpart F— *Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled*;

1.4.9 36 CFR Part 1194—*Electronic and Information Technology Accessibility Standards*;

1.4.10 49 CFR Part 609—*Transportation for Elderly and Handicapped Persons*; and

1.4.11 Federal civil rights and nondiscrimination directives implementing those federal laws and regulations, unless the federal government determines otherwise in writing.

1.5 The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations at 49 CFR Part 90 – *Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*;

1.6 The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634, and implement regulations of the U.S. Equal Employment Opportunity Commission 29 CFR Part 1625—*Age Discrimination in Employment Act*;

1.7 The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2;

1.8 Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 42 U.S.C. § 4321 note, and DOT Order 5620.3 at Federal Register Vol. 62 No. 18377—*Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*;

1.9 Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency, 42 U.S.C. §2000d – 1 note, and implementing policy guidance at Federal Register Vo. 70 No. 74087—*DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Person*; and

1.10 All provisions of Missouri Executive Order No. 94 – 03, promulgating the Code of Fair Practices.

2.0 NON-DISCRIMINATION POLICY, STATEMENT & ASSURANCES

SUB-RECIPIENT is required to adopt a nondiscrimination policy as stated in a Statement of Nondiscrimination that provides assurances that it will not discriminate against any person in the performance of any federally assisted program on the basis of race, color, or national origin. Specifically, **SUB-RECIPIENT’s** Statement of Nondiscrimination must state: “**SUB-RECIPIENT** assures that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.” **SUB-RECIPIENT’s** Statement of Nondiscrimination may be more inclusive than the language listed above, but it cannot be more exclusive.

2.1 SUB-RECIPIENT is required to publicly post its non-discrimination policy as stated in its Statement of Nondiscrimination, and **SUB-RECIPIENT** must provide a written copy of each to **WAMPO** upon execution of the Agreement. “Publicly post” includes, but is not limited to, posting the documents to **SUB-RECIPIENT’s** website if it has one.

2.2 SUB-RECIPIENT must include its non-discrimination policy as stated in its Statement of Nondiscrimination in all procurement documents, such as request for proposals, request for qualifications, and other similar documents.

2.3 SUB-RECIPIENT must include its non-discrimination policy as stated in its Statement of Nondiscrimination in all subcontracts, including those for materials and leases, that it enters into under the Agreement.

2.4 SUB-RECIPIENT must provide a sample of its procurement document(s) and subcontract to **WAMPO** upon execution of the Agreement, so that **WAMPO** can verify the inclusion of the required statement.

2.5 If the **SUB-RECIPIENT** does not have a non-discrimination policy as stated in a Statement of Nondiscrimination, then **SUB-RECIPIENT** must notify **WAMPO** of this prior to execution of the Agreement. If the **SUB-RECIPIENT** does not develop and/or adopt such a policy and statement prior to the execution of the Agreement, then **SUB-RECIPIENT** must use and adhere to the **WAMPO's** non-discrimination policy and statement. A copy of this will be provided to **SUB-RECIPIENT** upon execution of the Agreement and can be found at **WAMPO's** website at www.wampoks.org.

3.0 TITLE VI PLAN & COMPLAINT PROCEDURE

SUB-RECIPIENT is required to develop and publish a Title VI Plan that includes a Public Participation Plan (PPP), a Limited English Proficiency (LEP) Plan, and a Title VI Complaint Procedure. The Title VI Plan, and its attendant parts, must comply with Federal guidelines regarding such plans.

3.1 SUB-RECIPIENT must provide a copy of its Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure upon execution of the Agreement.

3.2 SUB-RECIPIENT must make the Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure publicly available, which includes posting each of these documents to **SUB-RECIPIENT's** website if it has one, and informing attendees at any public meetings, hearings, or other events related to the work under the Agreement of their rights under Title VI and the procedures for filing a Title VI complaint. **WAMPO** has brochures regarding Title VI rights and its Complaint Procedures that it can make available to **SUB-RECIPIENT** and can be found on **WAMPO's** website at www.wampoks.org.

3.3 If **SUB-RECIPIENT** does not have a federally compliant Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure, then **SUB-RECIPIENT** must notify **WAMPO** of this prior to the execution of the Agreement, and **SUB-RECIPIENT** must use **WAMPO's** Title VI Plan, PPP, LEP Plan, and Complaint Procedure. A copy of each will be provided to **SUB-RECIPIENT** upon execution of the Agreement and can be found on **WAMPO's** website at www.wampoks.org.

4.0 TITLE VI REQUIREMENTS IN RELATION TO COMMUNITY/PUBLIC ENGAGEMENT OR OUTREACH

If **SUB-RECIPIENT** is required to perform any public meetings, engagement, or other community outreach as part of the work under the Agreement, then **SUB-RECIPIENT** must ensure that all persons, including Limited English Proficiency (LEP) persons, are provided meaningful access, as it is defined under Title VI and related provisions, to these events. These requirements include, but are not limited to, ensuring that the meeting location, date, and time are selected in such a way as to not exclude a person from participation on the basis of race, color, national origin, sex, or disability;

informing attendees of their rights under Title VI; and ensuring that all attendees are provided the opportunity to participate without regard to their race, color, national origin, or LEP status.

4.1 SUB-RECIPIENT shall submit to WAMPO after every public meeting, engagement, or other community outreach a report that provides the following information: (1) description of the purpose of the event; (2) the time, date, and location of the event; (3) the methods used to advertise the event; (4) identify the building and room where the event was held; (5) note any special accommodations that were requested prior to or during the event; (6) how the attendees were informed of their rights under Title VI including complaint procedures; (7) the number of attendees; (8) the number of minority and women attendees (*note these last figures should be estimates based upon observations and should not be obtained by asking attendees to identify their gender, race, color, or national origin*). WAMPO has a form that it will provide to **SUB-RECIPIENT** upon request that **SUB-RECIPIENT** can use to document its public events.

5.0 TITLE VI REQUIREMENTS IN RELATION TO WEBSITE AND PRINTED MATERIALS DEVELOPMENT

If **SUB-RECIPIENT** is required to develop or create a website or printed informational materials as part of its work under the Agreement, then **SUB-RECIPIENT** must ensure that all persons, including Limited English Proficiency (LEP) persons, are provided meaningful access, as it is defined under Title VI and related provisions, to the website and the information contained in the printed materials. As part of the effort to ensure meaningful access, **SUB-RECIPIENT** will be required to develop any printed materials intended for public informational purposes (i.e. brochures and other promotional items) in such a way that these documents can readily be translated into other languages and/or formats upon request. **SUB-RECIPIENT** must design or create any website such that it includes a translator function so that the material included on the website can be translated into other languages. Additionally, **SUB-RECIPIENT** must design or create any website so that it is in compliance with the Rehabilitation Act, 29 U.S.C. §§ 794 *et seq.*, as amended, and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, as amended, and their implementing regulations, and that it adheres to the accessibility requirements set forth by the Federal government. The website must be designed or created in adherence with Section 508 Standards of the Rehabilitation Act. **SUB-RECIPIENT's** can find more information about accessibility standards at: <http://www.section508.gov/>.

6.0 TITLE VI REPORTING REQUIREMENTS

SUB-RECIPIENT is required to provide WAMPO the required information listed in 4.1 above in regard to public events. Further, **SUB-RECIPIENT** shall provide **WAMPO** with any additional information that **WAMPO** requests in regard to Title VI compliance. **SUB-RECIPIENT** shall also permit **WAMPO** to access its records up to and including accounting records that are pertinent to **WAMPO** substantiating **SUB-RECIPIENT's** compliance with Title VI.

7.0 TITLE VI COMPLAINTS

SUB-RECIPIENT must notify **WAMPO** in writing if a Title VI complaint is filed against it, within five (5) business days of **SUB-RECIPIENT** being notified of such complaint. The notification must be provided to WAMPO even if the complaint is not in regard to work that **SUB-RECIPIENT** performed under the Agreement. The notification shall include the following information: (1) date complaint was filed; (2) nature of complaint; (3) who was involved; (4) what action has been taken to date; and (5) any outcome(s) to date, if applicable.

8.0 DISADVANTAGED BUSINESS ENTERPRISES (DBEs) APPLICABLE REGULATIONS

SUB-RECIPIENT agrees to abide by the applicable DOT regulations governing DBE participation on federally assisted projects. These regulations can be found at 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. **SUB-RECIPIENT** can find the definition of DBE, small business concern, and other relevant definitions regarding DBE participation on this project in 49 CFR Part 26.

9.0 IMPORTANT DBE REQUIREMENTS

SUB-RECIPIENT is prohibited from excluding any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract made under the Agreement on the basis of race, color, sex, or national origin.

9.1 SUB-RECIPIENT must include this prohibition in all procurement documents, such as request for proposals, request for qualifications, and other similar documents.

9.2 SUB-RECIPIENT must include this prohibition in all subcontracts, including those for materials and leases, that it enters into under the Agreement.

9.3 SUB-RECIPIENT must provide a sample of its procurement document(s) and subcontract to WAMPO upon execution of the Agreement, so that **WAMPO** can verify the inclusion of the required prohibition.

10.0 DBE CONTRACT GOALS

If the project governed by the Agreement includes a DBE contract goal, **SUB-RECIPIENT** understands and agrees that it is required to strictly adhere to the requirements of 49 CFR Part 26 in its efforts to achieve the DBE contract goal.

11.0 SELECTING DBE SUBCONTRACTORS

In order for a firm to be eligible to participate as a DBE subcontractor on the project governed by the Agreement, the DBE subcontractor must be a certified DBE. The firm must be certified and registered as a DBE with the Kansas Department of Transportation or the Kansas Department of Commerce. It is the responsibility of **SUB-RECIPIENT** to ensure that the DBE subcontractor it hires is a certified DBE firm.

12.0 TERMINATING OR SUBSTITUTING A DBE SUBCONTRACTOR

SUB-RECIPIENT cannot terminate and/or substitute a DBE firm that it listed in its proposal as a subcontractor and/or was approved by **WAMPO** as a DBE subcontractor under the Agreement without the prior written consent of **WAMPO**. This includes, but is not limited to, instances where **SUB-RECIPIENT** seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If **SUB-RECIPIENT** wishes to terminate or substitute a DBE subcontractor it must first submit a written notice to the DBE subcontractor stating its intention to request a termination and/or substitution and the reason for the request, and give the DBE subcontractor no less than five (5) days to respond to the notice and to provide **SUB-RECIPIENT** and **WAMPO** the reasons why the subcontractor should not be terminated. A copy of this written notice must be provided to **WAMPO**. Only after the DBE subcontractor has been so notified and provided time to object, may **SUB-RECIPIENT** submit its request to terminate or substitute a DBE subcontractor. **SUB-RECIPIENT** must submit its request in writing to WAMPO and fully state the reasons for its request. Unless the request demonstrates that **SUB-RECIPIENT** has good cause to terminate and/or substitute a DBE subcontractor, WAMPO will not concur in **SUB-RECIPIENT's** finding of good cause and will not approve **SUB-RECIPIENT's** request to terminate and/or substitute a DBE subcontractor. The definition of "good cause" can be found at 49 CFR Part 26 § 26.53.

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12.1 When a DBE subcontractor is terminated, fails to complete its work on the Agreement for any reason, **SUB-RECIPIENT** is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE subcontractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was terminated. If there is a DBE contract goal on the project, then the work performed by the substitute DBE need only perform at least the same amount of work under the Agreement as the DBE that was terminated, to the extent needed to meet the DBE contract goal.

13.0 DBE REPORTING REQUIREMENTS

SUB-RECIPIENT is required to submit to **WAMPO**, on a monthly basis, the DBE Participation Form that is attached to the Agreement. **SUB-RECIPIENT** shall also provide any other data relevant to DBE participation on the project upon request by **WAMPO**. **SUB-RECIPIENT** shall also permit **WAMPO** to access its records up to and including accounting records that are pertinent to **WAMPO** substantiating the information provided by **SUB-RECIPIENT** on its DBE reporting forms.

14.0 FLOW DOWN PROVISIONS

The provisions listed in this Attachment apply to every subcontractor hired by **SUB-RECIPIENT** to perform work under the Agreement. **SUB-RECIPIENT** will ensure that all of its subcontractors are made aware of these requirements and will include these provisions as a part to any subcontract that **SUB-RECIPIENT** enters into under the Agreement.

Exhibit F

TITLE VI ASSURANCES

Title VI Standard Terms And Conditions (Sub-Recipients)

1) Civil Rights

a. Non-Discrimination Assurances

i. As required by federal law, **SUB-RECIPIENT** certifies that it will comply with all applicable federal and state statutes relating to nondiscrimination and equal opportunity, including, but not limited to Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 2000e).

ii. **SUB-RECIPIENT** shall comply with the administrative rules of the U.S. Department of Transportation (DOT) relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR Subtitle A, Part 21).

iii. **SUB-RECIPIENT** shall not discriminate on grounds of race, color, or national origin of any individual in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. **SUB-RECIPIENT** shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21. 5 including employment practices.

iv. These assurances concerning nondiscrimination also apply to sub-contractors and supplies of **SUB-RECIPIENT**. These apply to all solicitations either by competitive bidding or negotiation made by **SUB-RECIPIENT** for work to be performed under a subcontract including procurement of materials or equipment. Each potential sub-contractor or supplier shall be notified by **SUB-RECIPIENT** of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, or national origin of any individual.

v. **SUB-RECIPIENT** assures that, as a condition of receiving reimbursements under this Agreement, that it will not discriminate on grounds of race, color, or national origin of an individual in the performance of any services under this Agreement, including the selection and retention of sub-contractors and the procurement of materials and leases of equipment.

b. **SUB-RECIPIENT** shall comply with the data collection and reporting requirements subject to Title VI of the Civil Rights Act of 1964 and the implementing regulations of 28 CFR Part 42, Subpart F and 49 CFR Part 21.

c. The terms of this paragraph shall apply to all solicitations either by competitive bidding or negotiation made by **SUB-RECIPIENT** for work to be performed under a subcontract including procurement of materials or equipment, and **SUB-RECIPIENT** shall notify each potential subcontractor, supplier, or lessor of **SUB-RECIPIENT's** obligations under this Agreement.

d. Each of the statutes, regulations, or rules, including any later amendments, listed in this paragraph are incorporated by reference and made a part of this Agreement.

e. **SUB-RECIPIENT** shall include these provisions in every sub-contract, including procurement of materials or leases of equipment.

f. Failure to carry out the requirements set forth in this paragraph shall constitute a breach of contract and may result in termination of this Agreement or other remedy that is deemed appropriate.

EXHIBIT G

5316 Project Operating Budget

SUB-RECIPIENT's Name Wichita Transit

Budget Year - 11/1/13 – 5/1/15

Personnel:

- Driver

Fuel

Misc. *

Total Operating Cost

Project Income

Operating Subtotal \$337,752

Local Match

\$168,876

5316 Reimbursement

\$168,876

Total Project Cost

\$337,752

***If misc. expense is reflected in budget, please identify below.**

EXHIBIT H

WAMPO Info Sheet

Date

Project Number
(completed by WAMPO)

SUB-RECIPIENT's Name

Wichita Transit

SUB-RECIPIENT's
Federal Tax ID Number
(FEIN)

SUB-RECIPIENT's Dun &
Bradstreet Number
(DUNS)

SAM Expiration Date
(System for Award Management)

SAM Number

SUB-RECIPIENT Mailing
Address

Phone Number

Fax Number

AGREEMENT FOR 49 U.S.C. § 5317 New Freedom (NF) Funds

Wichita Transit
Wichita Transit Mobility Manager
NF Grant Agreement (CFDA 20.516)
Project Number NF-13-002

THIS AGREEMENT made and entered into this 1st day of November, 2013, by and between the Wichita Area Metropolitan Planning Organization, hereinafter referred to as “**WAMPO**”, and Wichita Transit referred to as the “**SUB-RECIPIENT**”, acting by and through Steve Spade its duly authorized representative, whose office is located at 777 E. Waterman, Wichita, KS 67202. **WAMPO** and the **SUB-RECIPIENT** are collectively referred to as the “**PARTIES**”.

INTRODUCTION

The 49 U.S.C. § 5317 (New Freedom program) of the Safe Accountable Flexible and Efficient Transportation Act, a Legacy for Users (SAFETEA-LU), hereinafter referred to as the “**ACT**”, provides in part, for operating grants to eligible applicants for the specific purpose of assisting them in providing transportation services that go beyond those required by the Americans with Disabilities Act (ADA). This service is for person with disabilities living in rural and non-urbanized (less than 50,000 population) areas and urbanized (greater than 50,000 population) areas. The 49 U.S.C. § 5317 projects may include the transportation of rural and non-urbanized area residents to and from activities in the urbanized areas. For this Agreement, transportation shall be provided as required by U.S.C. § 5317.

The Governor of the State of Kansas in accordance with a request by the Federal Administration, hereinafter referred to as “**FTA**”, has designated **WAMPO** as the designated recipient of U.S.C. § 5317 funds and to evaluate, select projects, and coordinate grant applications.

The **SUB-RECIPIENT** desires to apply, secure, and utilize grant funds for the transportation needs of persons within the Wichita Urbanized Area. **WAMPO** is willing, subject to the terms of this Agreement, to provide financial assistance to the **SUB-RECIPIENT** for the undertaking of a transportation project for the general public, hereinafter referred to as “**PROJECT**”. The **SUB-RECIPIENT** expressed an interest in sponsoring the **PROJECT** within the Wichita Urbanized Area. The **SUB-RECIPIENT** has demonstrated acceptable efforts to achieve coordination with other transportation providers and users, including local private operators.

The **PARTIES**, in consideration of the mutual covenants herein set forth, agree as follows:

Section 1. Purpose of Agreement. The purpose of this Agreement is to provide for the undertaking of the **PROJECT** by the **SUB-RECIPIENT**. The **PARTIES** mutually agree the Agreement contains the terms, conditions, and mutual understandings of the **PARTIES** as to the manner in which the funding for operating expenses of the **PROJECT** will be undertaken and completed.

Section 2. Administration. **WAMPO** will serve as the administer of federal funds for this **PROJECT**.

Section 3. Scope of the PROJECT. The **SUB-RECIPIENT** shall undertake and complete the **PROJECT** in accordance with the terms and conditions of this Agreement and the **PROJECT** application, which is hereby incorporated in the Agreement and made a part thereof.

Under the direction of the Agreement and the **PROJECT** application, the **SUB-RECIPIENT** shall provide for the **PROJECT** under the following guidelines:

- A. The **PROJECT** will be performed within the **SUB-RECIPIENTS** service area.
- B. The **PROJECTS** will provide transportation for the elderly, persons with disabilities, and the general public to and from work activities within the **SUB-RECIPIENT'S** area.
- C. The **SUB-RECIPIENT** will provide for the operation and management of the **PROJECT** in accordance with Exhibit G – Project Operating Budget, which is attached hereto and incorporated herein.
- D. The **SUB-RECIPIENT** shall advise WAMPO in writing of any changes in the **PROJECT**.
- E. The properties and policies for the **PROJECT** shall provide for totally accessible transportation for the elderly and the disabled to and from work activities for the duration of the project.

Section 4. Contractual Provisions. The provisions and assurances found in the approved 49 U.S.C. § 5317 **PROJECT** application submitted by the **SUB-RECIPIENT** are hereby incorporated and made a part hereof.

Section 5. Cost of Project, Funding Responsibility and Payment. The total cost for the **PROJECT** is estimated to be \$115,828 of which \$115,828 is reimbursable by **WAMPO**. These figures are based upon a matching ratio of 100 percent federal and 0 percent local funds for operating expenses. See Exhibit G – Project Operating Budget for the responsibilities of the **SUB-RECIPIENT**.

As described in **Section 3. Scope of the PROJECT** of this Agreement, the **SUB-RECIPIENT** will receive reimbursement from **WAMPO** for actual expenses incurred by the **SUB-RECIPIENT**, but not to exceed the amounts listed in Exhibit G – Project Operating Budget which is hereby incorporated into this Agreement.

Any **PROJECT** income derived from the **PROJECT** will be used to reduce the operating costs prior to submittal of reimbursable costs to **WAMPO**. **PROJECT** costs referred to in this Agreement shall be comprised of the allowable direct and indirect costs incidental to the performance to be determined in accordance with the standards set forth in the Code of Federal Regulations, 41 CFR 1-15.705 and 1-15.706 which are incorporated herein by reference insofar as they are applicable.

Upon receipt of the Monthly Ridership Report and the billing invoice, **WAMPO** will reimburse allowable costs as requested by the **SUB-RECIPIENT**. Reimbursement of any cost pursuant to this section shall not constitute a final determination by **WAMPO** of the eligibility of such costs and shall not constitute a waiver of any violation of the terms of this Agreement committed by the **SUB-RECIPIENT**.

Payment of reimbursable costs, as set forth in this section, is conditioned upon receipt of 49 U.S.C. § 5317 Funds by **WAMPO** for the **PROJECT** costs.

It is agreed and understood by and between the parties that any funds expended by the **SUB-RECIPIENT** in violation of **WAMPO**, local, state and/or federal laws, rules, regulations, standards, principles, policies, or the provisions of this Agreement are disallowable. In the event that such disallowable expenditures are deemed to have been reimbursed, **WAMPO** shall upon written notification to the **SUB-RECIPIENT** request adjustment or repayment of such disallowed expenditures. **SUB-RECIPIENT** shall make such adjustment or repayment within thirty (30) days from receipt of said notification. Funds declared to be provided for ineligible expenditures will be returned to **WAMPO** within thirty (30) days of determination and request for payment. **WAMPO** may withhold any payments to the **SUB-RECIPIENT** for the purposes of set off until such time as any disallowed cost is repaid.

Section 6. Local Matching Funds for Support of the PROJECT. The **SUB-RECIPIENT** shall maintain the local funding support for the operation of transportation service at the same or increased level even if there is an increase of Federal or State assistance. If any of the local match support (i.e. County, State, or Federal funds) is pulled out of a **PROJECT**, the **FTA** funds being provided in this Agreement will be withdrawn from that **PROJECT**.

Section 7. Third Party Agreement. The **SUB-RECIPIENT** shall not execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of **WAMPO**.

Section 8. Period of Performance. The **SUB-RECIPIENT** shall commence implementation of the **PROJECT** upon execution of this Agreement and upon receipt of a written "Notice to Proceed" issued by **WAMPO**. The **SUB-RECIPIENT** shall prosecute the work outlined herein to completion no later than One Year, Six Months (18 months) following the date of the Notice to Proceed. The **SUB-RECIPIENT** has until July 1st following the termination of the Agreement to seek reimbursement. All requests for reimbursement should be submitted to **WAMPO** no later than July 1st following the end of the Agreement. After that date, any unclaimed or unused funds will be retained by **WAMPO**. No funds will be carried over.

Section 9. Dun & Bradstreet. The **SUB-RECIPIENT** will obtain a D-U-N-S number (Dun & Bradstreet Number). Use the following link: http://www.dnb.com/us/duns_update/.

Section 10. System for Award Management. The **SUB-RECIPIENT** will maintain current registrations with the System for Award Management (SAM) (www.sam.gov) at all times during which they have active federal awards. This is the Official U.S. Government system that consolidates the capabilities of CCR/FedReg, ORCA, and EPLS.

Section 11. Audit. The **SUB-RECIPIENT** shall permit **WAMPO's** authorized representatives, the **FTA**, and the United States Department of Transportation (USDOT) to inspect all of the **SUB-RECIPIENT's** equipment, the books, records, and accounts of the **SUB-RECIPIENT** pertaining to the **PROJECT**. The **SUB-RECIPIENT** agrees the required financial and compliance audit as required by **WAMPO** will be completed within the prescribed audit reporting cycle. Local governments shall comply with SAFETA-LU, OMB Circular A-133 "Audits of State and Local Governments, and Non-Profit Organizations".

Section 12. Employment of WAMPO's Employees. The **SUB-RECIPIENT** will not, without written permission from **WAMPO**, engage the services of any person or persons in the employment of **WAMPO** for any work required by the terms of this Agreement.

Section 13. Ownership of Data. All reports and documents pertaining to the **PROJECT** mentioned herein shall be prepared in accordance with **WAMPO's** standard practice and shall become the property of **WAMPO** upon the completion thereof in accordance with the terms of this Agreement, without restrictions as to their further use.

Section 14. Indemnification. The **SUB-RECIPIENT** will defend, indemnify, hold harmless, and save **WAMPO** and its authorized representatives and **FTA** from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions of performance of this Agreement, any contract entered into under this Agreement, or the operation of the vehicles described herein by the **SUB-RECIPIENT**, the **SUB-RECIPIENT's** employees, agents, or subcontractors.

Section 15. Covenant Against Contingent Fees. The **SUB-RECIPIENT** warrants it has not employed or retained any company or person, other than a bona fide employee working solely for the

SUB-RECIPIENT, to solicit or secure this Agreement, and it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the **SUB-RECIPIENT**, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, WAMPO shall have the right to annul this Agreement without liability, or in his or her discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee, as stated in Exhibit D, Certification of Provider and Certification of **WAMPO**, which is incorporated in this Agreement and made a part thereof.

Section 16. Changes to Agreement. No changes to this Agreement will be allowed without prior written approval by **WAMPO**. To be effective, a revision in this Agreement shall be made by an amendment to this Agreement.

Section 17. Records and Reports.

- A. Establish and Maintain Accounting Records:** The **SUB-RECIPIENT** shall establish and maintain a separate account for the **PROJECT**, either independently or within its existing accounting system, to be known as the **PROJECT** account. The **SUB-RECIPIENT** agrees to keep detailed and accurate records of all labor, material, supplies, incidentals, and any other necessary costs involved in the **PROJECT**.
- B. Retention of Records:** The **SUB-RECIPIENT** shall be required to maintain accounting records and other evidence pertaining to the costs incurred and to make the records available at their office at all reasonable times during the period of Agreement performance and for five (5) years from the date of the close of this Agreement as delineated in the **Notice to Proceed** letter. Such accounting records and other evidence pertaining to the costs incurred shall be made available for inspection by **WAMPO**, **FTA**, **USDOT**, or their authorized representatives, and copies thereof shall be furnished if requested.
- C. Reports:** The **SUB-RECIPIENT** shall advise **WAMPO** regarding the progress of the **PROJECT** at such times and in such a manner as **WAMPO** may require, including, but not limited to meetings, quarterly reports, and expenditure reports. The **SUB-RECIPIENT** shall submit to **WAMPO** such financial statements, data, records, contracts, and other documents related to the **PROJECT** as may be deemed necessary by **WAMPO**.

Section 18. Termination of Agreement. **WAMPO** has the right to terminate this Agreement by giving thirty (30) days written notice in the event **WAMPO** determines the **PROJECT** should be abandoned or indefinitely postponed; provided, however, in any case, the **SUB-RECIPIENT** shall be paid the amount due for their services rendered by the operators of the **PROJECT** up to the time of termination on the basis of the provisions of this Agreement.

WAMPO has the right to terminate this Agreement at any time, upon written notice to the **SUB-RECIPIENT**, in the event the **SUB-RECIPIENT** fails to comply with all the terms and provisions of this Agreement. The **SUB-RECIPIENT** shall be paid for expenses judged reasonable for the services rendered to the date of termination; provided in the event of termination of this Agreement, the **SUB-RECIPIENT** shall not be paid more than that which would be received under the terms of this Agreement for that portion of services rendered to the date of termination.

Either party may terminate this Agreement for cause, provided written notification is received by the other party thirty (30) days prior to the proposed termination date. In the event of termination by **WAMPO**, the **SUB-RECIPIENT** shall only be paid for all costs and uncancelable obligations incurred prior to the date of termination on the basis of the provisions of this Agreement.

The Agreement's termination shall not relieve the **SUB-RECIPIENT** of any of its obligation to **WAMPO** existing at the time of expiration, or terminate those obligations of the **SUB-RECIPIENT**, which, by their nature, survive the termination of this Agreement.

Section 19. Noncompliance with PROJECT's Application and Program. The **SUB-RECIPIENT** shall be in noncompliance with either the terms of this Agreement or each **PROJECT** application if the **SUB-RECIPIENT** misuses a vehicle. Misuse includes, but is not limited to, the following:

- A. Vehicles used for agency administrative functions, such as staff use to attend meetings, going to the bank or post office, etc.
- B. The **SUB-RECIPIENT** fails to label vehicles properly.

In the event of noncompliance by the **SUB-RECIPIENT**, **WAMPO** shall not make any payments during the term of noncompliance. The **SUB-RECIPIENT** agrees payment is due from **WAMPO** for a **PROJECT** only during the time the **PROJECT** is in compliance. Any controversy arising out of what constitutes the period of noncompliance shall be determined by **WAMPO**.

Section 20. Compliance. The **SUB-RECIPIENT** shall comply with all federal, state, and local laws, ordinances, resolutions, rules, regulations, standards, principles, policies and procedures in the implementation of the transportation service provided for in this Agreement. The **SUB-RECIPIENT** agrees to comply with all terms, provisions, and conditions which **WAMPO** is required to comply with pursuant to **WAMPO's** agreements with the **FTA**. Said terms, provisions, and conditions, including all future additions and amendments thereto, are hereby incorporated herein..

Section 21. Responsibility to Employees. The **SUB-RECIPIENT** accepts full responsibility for providing worker's compensation coverage and for payment of unemployment insurance, and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for his or her employees engaged in the work authorized by this Agreement, and will indemnify and hold harmless, **WAMPO** for the same.

Section 22. Equal Employment Opportunity. In connection with the execution of this contract, the **SUB-RECIPIENT** shall not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, disability, or national origin. The **SUB-RECIPIENT** shall take affirmative action to insure applicants are employed, and employees are treated during this employment, without regard to race, religion, color, age, sex, disability, or national origin. Such actions shall include, but not be limited to the following: employment; upgrading; demotion or transfer; recruitment or advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training including apprenticeship.

Section 23. Cooperation and Coordination of Transportation. The **SUB-RECIPIENT** will continue to demonstrate acceptable efforts to achieve coordination with other transportation providers and users, including private transit and Paratransit operators and social service agencies capable of purchasing service. In connection with the performance of the **PROJECT**, the **SUB-RECIPIENT** will cooperate with **WAMPO** in meeting its commitments and goals with regard to the provision of service that will not hamper interagency cooperation and coordination of transportation services provided in their respective geographical area.

Section 24. SUB-RECIPIENT's Capabilities. The **SUB-RECIPIENT** possesses and will maintain requisite fiscal, managerial, and legal capacity to carry out the 49 U.S.C. § 5317 program and to receive and disburse federal and state funds.

Section 25. Matching Share for the PROJECT. The **SUB-RECIPIENT** agrees the designated combination of federal, state, local, private and/or in-kind funding sources has been or will be committed to provide the required matching share for the **PROJECT**.

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Section 26. Civil Rights Act of 1964. The **SUB-RECIPIENT** will comply with all the requirements imposed by the Title VI and Title VII of the Civil Rights Act of 1964 (78 Sta. 252), the Regulations of **USDOT** issued thereunder (49 CFR 27, Subpart A), and the assurance by the **WAMPO** pursuant thereto. (See Exhibit E which is incorporated herein).

Section 27. Section 504 – Rehabilitation Act of 1973. The **SUB-RECIPIENT** will comply with all requirements imposed by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Regulations of USDOT issued thereunder (49 CFR 27), and the assurances by the **WAMPO** pursuant thereto.

Section 28. Disadvantaged Business. In connection with the performance of this Agreement, the **SUB-RECIPIENT** will cooperate with **WAMPO** in meeting its commitments and goals with regard to the maximum utilization of disadvantaged businesses and will use its best efforts to insure disadvantaged businesses shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. The **SUB-RECIPIENT** will comply with the statements in 49 CFR 23.43, Subsections (a) and (b).

Section 29. Interest of Members of or Delegates to Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 30. Prohibited Interest. No member, officer, or employee of the **SUB-RECIPIENT** during their tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 31. Labor Protection. The **SUB-RECIPIENT** shall undertake, carry out, and complete its transportation needs under the terms and conditions determined the Secretary of the U.S. Department of Labor to be fair and equitable to protect the interests of employees affected by the **SUB-RECIPIENT** and meeting the requirements of Section 13 (c) of the Federal Transit Administration Act of 1964, as amended, referenced by the **PROJECT'S** acceptance of Special Section 13 (c) Warranty incorporated into and made part of this Agreement under Section 4, titled Contractual Provisions.

- A. The **PROJECT** shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the **PROJECT**.
- B. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued.
- C. The **SUB-RECIPIENT** shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the **PROJECT**.
- D. In the event an employee is terminated or laid off as a result of the **PROJECT**, he or she shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the **SUB-RECIPIENT** shall provide or provide for such training or retraining at no cost to the employee.

Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the **PROJECT**, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as

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specified in the employee protective arrangement certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971.

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the **PROJECT**" as used herein shall include events occurring in anticipation of, during, and subsequent to the **PROJECT**.

- E. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the **SUB-RECIPIENT**, their employees, and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions.
- F. The **SUB-RECIPIENT** agrees any controversy respecting the **PROJECT'S** effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.
- G. The **SUB-RECIPIENT** shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of decisions called for in the preceding paragraph.
- H. The **SUB-RECIPIENT** will post, in a prominent and accessible place, a notice stating the **SUB-RECIPIENT** is a recipient of Federal assistance under the **FTA** and has agreed to comply with the provisions of 49 U.S.C., Section 54333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees.

Section 32. Lobbying. The **SUB-RECIPIENT** certifies, to the best of his or her knowledge and believe:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying", 61 Fed. Reg. 1413 (1/19/96).]
- C. The undersigned shall require the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contract under grants, loans, and cooperative agreements) and all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31

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U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The **SUB-RECIPIENT** hereby certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the **SUB-RECIPIENT** understands and agrees the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The **SUB-RECIPIENT** acknowledges the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801, *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 CFR 31, apply to its actions pertaining to each **PROJECT**. Upon execution of the underlying Agreement, the **SUB-RECIPIENT** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying contract or the **FTA** assisted **PROJECT** for which this contract work is being performed. In addition to other penalties that may be applicable, the **SUB-RECIPIENT** further acknowledges if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties for the Program Fraud Civil Remedies Act of 1986 on the **SUB-RECIPIENT** to the extent the Federal Government deems appropriate.

The **SUB-RECIPIENT** also acknowledges if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project financed in whole or in part with Federal assistance originally awarded by **FTA** under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the **SUB-RECIPIENT**, to the extent the Federal Government deems appropriate.

The **SUB-RECIPIENT** agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by **FTA**. It is further agreed the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 34. Federal Changes. The **SUB-RECIPIENT** shall at all times comply with all applicable **FTA** regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form **FTA** MA) between the **SUB-RECIPIENT** and **FTA**, as they may be amended or promulgated from time to time during the term of this Agreement. The **SUB-RECIPIENT'S** failure to so comply shall constitute a material breach of this Agreement.

Section 35. Incorporation of FTA Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in **FTA** Circular 4220.1D, dated April 15, 1996, and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all **FTA** mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The **SUB-RECIPIENT** shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause the **SUB-RECIPIENT** to be in violation of the **FTA** terms and conditions.

Section 36. Buy America. The **SUB-RECIPIENT** agrees to comply with 49 U.S.C. § 5323(j) and 49 CFR 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in **FTA**-funded projects are produced in the United States, unless a waiver has been granted by **FTA** or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements

for rolling stock are set out in 49 U.S.C. § 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent (60%) domestic content.

Section 37. Disputes. Disputes arising in the performance of this Agreement, which are not resolved by agreement of the Parties, shall be decided in writing by the authorized representative of **WAMPO** and delivered by e-mail to the **SUB-RECIPIENT**. This decision shall be final and conclusive unless within five (5) business days from the date of delivery, the **SUB-RECIPIENT** delivers a written appeal to **WAMPO**. In connection with any such appeal, the **SUB-RECIPIENT** shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of **WAMPO** shall be binding upon the **SUB-RECIPIENT** and the **SUB-RECIPIENT** shall abide by the decision.

- A. Performance During Dispute:** Unless otherwise directed by **WAMPO**, the **SUB-RECIPIENT** shall continue performance under this Agreement while matters in dispute are being resolved.
- B. Claims for Damages:** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- C. Rights and Remedies:** The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by **WAMPO** or **SUB-RECIPIENT** shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as many be specifically agreed in writing.

Section 38. \$100,000 Threshold. The **SUB-RECIPIENT** also agrees to include these following requirements in each agreement that totals may exceed \$100,000 financed in whole or in part with Federal assistance provided by **FTA**:

- A. Clean Air:** The **SUB-RECIPIENT** hereby agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The **SUB-RECIPIENT** agrees to report each violation to **WAMPO** and understands and agrees **WAMPO** will, in turn, report each violation as required to assure notification to **FTA** and the appropriate EPA Regional Office.
- B. Clean Water:** The **SUB-RECIPIENT** hereby agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.* The **SUB-RECIPIENT** agrees to report each violation to **WAMPO** and understands and agrees **WAMPO** will, in turn report violation as required to assure notification to **FTA** and the appropriate EPA Regional Office.
- C. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – (Lower Tier Covered Transaction):** The **SUB-RECIPIENT** certifies, by submission of this Agreement, neither it nor its “principals” [as defined by 49 CFR 29.105] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. If the **SUB-RECIPIENT** should be unable to certify to the statements in this certification, the **SUB-RECIPIENT** shall attach an explanation to this submitted Agreement.

Section 39. Contracts Under This Agreement. Unless otherwise authorized in writing by **WAMPO**, the **SUB-RECIPIENT** shall not assign any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of **WAMPO**.

Section 40. Contractual Provisions Attachment. The provisions found in Exhibit B Contractual Provisions Attachment, are hereby incorporated in this Agreement and made a part thereof.

Section 41. Master Agreement. The Parties to this Agreement agree the standard terms and agreements between the **FTA** and **WAMPO**, commonly referred to as "Master Agreement", as amended from time to time, are hereby incorporated into this Agreement and made a part thereof.

Section 42. Successors and Assigns. It is further understood this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon **WAMPO** and the **SUB-RECIPIENT** and their successors and assigns.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its requirements or modification.

IN WITNESS THEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

Wichita Transit

**Wichita Area Metropolitan Planning
Organization**

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Date: _____

Date: _____

City of Wichita as Fiscal Agent for WAMPO

Approved as to form:

By: _____
Carl Brewer, City of Wichita Mayor

Attest: _____
John Schlegel, WAMPO Secretary

Austin Parker

Attorney for the Wichita Area
Metropolitan Planning Organization

Date: _____

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EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this Agreement, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this Agreement, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

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2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present Agreement, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
- D. Exempted from these requirements are:
1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
 2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT B

CONTRACTUAL PROVISIONS ATTACHMENT

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said Agreement being the 1st day of November, 2013.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Finance of the City of Wichita, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, WAMPO may terminate this agreement at the end of its current fiscal year. WAMPO agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this Agreement, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year; to take possession of any equipment it provided to WAMPO under the Agreement. WAMPO will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by WAMPO, title to any such equipment shall revert to contractor at the end of WAMPO's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the WAMPO nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this Agreement understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such Agreement or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the WAMPO has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the WAMPO shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this Agreement, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this Agreement on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The WAMPO shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this Agreement.
10. **Insurance:** The WAMPO shall not be required to purchase, any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the WAMPO to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

EXHIBIT C

CERTIFICATION OF COORDINATING SUB-RECIPIENT

I hereby certify that I am the Project Manager and duly authorized representative of Wichita Transit, whose address is 777 E. Waterman, Wichita, KS 67202 and that neither I nor the above **SUB-RECIPIENT** I here represent has:

- (a) Employed or retained for the payment of a commission, percentage, brokerage, contingent fee, or other consideration, any person (other than a bona fide employee working solely for me or the above **SUB-RECIPIENT**) to solicit or secure this agreement.
- (b) Agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- (c) Paid, or agreed to pay, to any firm, organization of persons (other than a bona fide employee working solely for me or the above **SUB-RECIPIENT**) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to **WAMPO** in connection with this agreement and is subject to State and Federal laws, both criminal and civil.

(Date)

(Signature)

EXHIBIT D

CERTIFICATION OF WAMPO

I hereby certify that I represent **WAMPO** and that the above **SUB-RECIPIENT** or the **SUB-RECIPIENT's** representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the above referenced **SUB-RECIPIENT** in connection with this agreement and is subject to State and Federal laws, both criminal and civil.

(Date)

(Signature)
WAMPO

By: Kristen Zimmerman
Transportation Planning Manager

Exhibit E

CONTRACTOR ASSURANCE

Title VI Standard Terms And Conditions (Sub-Recipients)

SUB-RECIPIENT understands and agrees that the following terms and conditions apply to the Agreement entered into between **SUB-RECIPIENT** and the Wichita Area Metropolitan Area Planning Department (**WAMPO**). These terms and conditions are made a part of and are hereby incorporated into the Agreement. **SUB-RECIPIENT** further understands and agrees that failure to adhere to these terms and conditions constitutes a material breach of its Agreement with **WAMPO**, and that **WAMPO** may take the appropriate action against **SUB-RECIPIENT** to ensure compliance with these provisions, up to and including ordering a stoppage of work, suspending payments, or terminating the Agreement.

1.0 APPLICABLE TITLE VI & OTHER CIVIL RIGHTS LAWS & REGULATIONS

SUB-RECIPIENT agrees to abide by all applicable federal and state laws, regulations, orders, and directives regarding non-discrimination in federally assisted programs. These laws, regulations, orders, and directives include, but are not limited to:

1.1 Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and implementing regulations at 49 CFR Part 21 – *Nondiscrimination in Federally Assisted Programs of the Department of Transportation— Effectuation of Title VI of the Civil Rights Act*;

1.2 The equal employment opportunity provisions of 49 U.S.C. § 5332 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and implementing regulations;

1.3 Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and implementing regulations at 49 CFR Part 25 – *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*;

1.4 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 *et seq.*, and implementing regulations, including:

1.4.1 49 CFR Part 37—*Transportation Services for Individuals with Disabilities (ADA)*;

1.4.2 49 CFR Part 27—*Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance*;

1.4.3 36 CFR Part 1192 and 49 CFR Part 38—*Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles*;

1.4.4 28 CFR Part 35—*Nondiscrimination on the Basis of Disability in State and Local Government Services*;

1.4.5 28 CFR Part 36—*Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*;

1.4.6 41 CFR Subpart 101 – 119— *Accommodations for the Physically Handicapped*;

1.4.7 29 CFR Part 1630—*Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act*;

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1.4.8 47 CFR Part 64, Subpart F— *Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled*;

1.4.9 36 CFR Part 1194—*Electronic and Information Technology Accessibility Standards*;

1.4.10 49 CFR Part 609—*Transportation for Elderly and Handicapped Persons*; and

1.4.11 Federal civil rights and nondiscrimination directives implementing those federal laws and regulations, unless the federal government determines otherwise in writing.

1.5 The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations at 49 CFR Part 90 – *Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance*;

1.6 The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 through 634, and implement regulations of the U.S. Equal Employment Opportunity Commission 29 CFR Part 1625—*Age Discrimination in Employment Act*;

1.7 The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2;

1.8 Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 42 U.S.C. § 4321 note, and DOT Order 5620.3 at Federal Register Vol. 62 No. 18377—*Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*;

1.9 Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency, 42 U.S.C. §2000d – 1 note, and implementing policy guidance at Federal Register Vo. 70 No. 74087—*DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Person*; and

1.10 All provisions of Missouri Executive Order No. 94 – 03, promulgating the Code of Fair Practices.

2.0 NON-DISCRIMINATION POLICY, STATEMENT & ASSURANCES

SUB-RECIPIENT is required to adopt a nondiscrimination policy as stated in a Statement of Nondiscrimination that provides assurances that it will not discriminate against any person in the performance of any federally assisted program on the basis of race, color, or national origin. Specifically, **SUB-RECIPIENT's** Statement of Nondiscrimination must state: "**SUB-RECIPIENT** assures that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance." **SUB-RECIPIENT's** Statement of Nondiscrimination may be more inclusive than the language listed above, but it cannot be more exclusive.

2.1 SUB-RECIPIENT is required to publicly post its non-discrimination policy as stated in its Statement of Nondiscrimination, and **SUB-RECIPIENT** must provide a written copy of each to **WAMPO** upon execution of the Agreement. "Publicly post" includes, but is not limited to, posting the documents to **SUB-RECIPIENT's** website if it has one.

2.2 SUB-RECIPIENT must include its non-discrimination policy as stated in its Statement of Nondiscrimination in all procurement documents, such as request for proposals, request for qualifications, and other similar documents.

2.3 SUB-RECIPIENT must include its non-discrimination policy as stated in its Statement of Nondiscrimination in all subcontracts, including those for materials and leases, that it enters into under the Agreement.

2.4 SUB-RECIPIENT must provide a sample of its procurement document(s) and subcontract to **WAMPO** upon execution of the Agreement, so that **WAMPO** can verify the inclusion of the required statement.

2.5 If the **SUB-RECIPIENT** does not have a non-discrimination policy as stated in a Statement of Nondiscrimination, then **SUB-RECIPIENT** must notify **WAMPO** of this prior to execution of the Agreement. If the **SUB-RECIPIENT** does not develop and/or adopt such a policy and statement prior to the execution of the Agreement, then **SUB-RECIPIENT** must use and adhere to the **WAMPO's** non-discrimination policy and statement. A copy of this will be provided to **SUB-RECIPIENT** upon execution of the Agreement and can be found at **WAMPO's** website at www.wampoks.org.

3.0 TITLE VI PLAN & COMPLAINT PROCEDURE

SUB-RECIPIENT is required to develop and publish a Title VI Plan that includes a Public Participation Plan (PPP), a Limited English Proficiency (LEP) Plan, and a Title VI Complaint Procedure. The Title VI Plan, and its attendant parts, must comply with Federal guidelines regarding such plans.

3.1 SUB-RECIPIENT must provide a copy of its Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure upon execution of the Agreement.

3.2 SUB-RECIPIENT must make the Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure publicly available, which includes posting each of these documents to **SUB-RECIPIENT's** website if it has one, and informing attendees at any public meetings, hearings, or other events related to the work under the Agreement of their rights under Title VI and the procedures for filing a Title VI complaint. **WAMPO** has brochures regarding Title VI rights and its Complaint Procedures that it can make available to **SUB-RECIPIENT** and can be found on **WAMPO's** website at www.wampoks.org.

3.3 If **SUB-RECIPIENT** does not have a federally compliant Title VI Plan, including the PPP, LEP Plan, and Complaint Procedure, then **SUB-RECIPIENT** must notify **WAMPO** of this prior to the execution of the Agreement, and **SUB-RECIPIENT** must use **WAMPO's** Title VI Plan, PPP, LEP Plan, and Complaint Procedure. A copy of each will be provided to **SUB-RECIPIENT** upon execution of the Agreement and can be found on **WAMPO's** website at www.wampoks.org.

4.0 TITLE VI REQUIREMENTS IN RELATION TO COMMUNITY/PUBLIC ENGAGEMENT OR OUTREACH

If **SUB-RECIPIENT** is required to perform any public meetings, engagement, or other community outreach as part of the work under the Agreement, then **SUB-RECIPIENT** must ensure that all persons, including Limited English Proficiency (LEP) persons, are provided meaningful access, as it is defined under Title VI and related provisions, to these events. These requirements include, but are not limited to, ensuring that the meeting location, date, and time are selected in such a way as to not exclude a person from participation on the basis of race, color, national origin, sex, or disability;

informing attendees of their rights under Title VI; and ensuring that all attendees are provided the opportunity to participate without regard to their race, color, national origin, or LEP status.

4.1 SUB-RECIPIENT shall submit to WAMPO after every public meeting, engagement, or other community outreach a report that provides the following information: (1) description of the purpose of the event; (2) the time, date, and location of the event; (3) the methods used to advertise the event; (4) identify the building and room where the event was held; (5) note any special accommodations that were requested prior to or during the event; (6) how the attendees were informed of their rights under Title VI including complaint procedures; (7) the number of attendees; (8) the number of minority and women attendees (*note these last figures should be estimates based upon observations and should not be obtained by asking attendees to identify their gender, race, color, or national origin*). WAMPO has a form that it will provide to **SUB-RECIPIENT** upon request that **SUB-RECIPIENT** can use to document its public events.

5.0 TITLE VI REQUIREMENTS IN RELATION TO WEBSITE AND PRINTED MATERIALS DEVELOPMENT

If **SUB-RECIPIENT** is required to develop or create a website or printed informational materials as part of its work under the Agreement, then **SUB-RECIPIENT** must ensure that all persons, including Limited English Proficiency (LEP) persons, are provided meaningful access, as it is defined under Title VI and related provisions, to the website and the information contained in the printed materials. As part of the effort to ensure meaningful access, **SUB-RECIPIENT** will be required to develop any printed materials intended for public informational purposes (i.e. brochures and other promotional items) in such a way that these documents can readily be translated into other languages and/or formats upon request. **SUB-RECIPIENT** must design or create any website such that it includes a translator function so that the material included on the website can be translated into other languages. Additionally, **SUB-RECIPIENT** must design or create any website so that it is in compliance with the Rehabilitation Act, 29 U.S.C. §§ 794 *et seq.*, as amended, and the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, as amended, and their implementing regulations, and that it adheres to the accessibility requirements set forth by the Federal government. The website must be designed or created in adherence with Section 508 Standards of the Rehabilitation Act. **SUB-RECIPIENT's** can find more information about accessibility standards at: <http://www.section508.gov/>.

6.0 TITLE VI REPORTING REQUIREMENTS

SUB-RECIPIENT is required to provide WAMPO the required information listed in 4.1 above in regard to public events. Further, **SUB-RECIPIENT** shall provide **WAMPO** with any additional information that **WAMPO** requests in regard to Title VI compliance. **SUB-RECIPIENT** shall also permit **WAMPO** to access its records up to and including accounting records that are pertinent to **WAMPO** substantiating **SUB-RECIPIENT's** compliance with Title VI.

7.0 TITLE VI COMPLAINTS

SUB-RECIPIENT must notify **WAMPO** in writing if a Title VI complaint is filed against it, within five (5) business days of **SUB-RECIPIENT** being notified of such complaint. The notification must be provided to WAMPO even if the complaint is not in regard to work that **SUB-RECIPIENT** performed under the Agreement. The notification shall include the following information: (1) date complaint was filed; (2) nature of complaint; (3) who was involved; (4) what action has been taken to date; and (5) any outcome(s) to date, if applicable.

8.0 DISADVANTAGED BUSINESS ENTERPRISES (DBEs) APPLICABLE REGULATIONS

SUB-RECIPIENT agrees to abide by the applicable DOT regulations governing DBE participation on federally assisted projects. These regulations can be found at 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. **SUB-RECIPIENT** can find the definition of DBE, small business concern, and other relevant definitions regarding DBE participation on this project in 49 CFR Part 26.

9.0 IMPORTANT DBE REQUIREMENTS

SUB-RECIPIENT is prohibited from excluding any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract made under the Agreement on the basis of race, color, sex, or national origin.

9.1 SUB-RECIPIENT must include this prohibition in all procurement documents, such as request for proposals, request for qualifications, and other similar documents.

9.2 SUB-RECIPIENT must include this prohibition in all subcontracts, including those for materials and leases, that it enters into under the Agreement.

9.3 SUB-RECIPIENT must provide a sample of its procurement document(s) and subcontract to WAMPO upon execution of the Agreement, so that **WAMPO** can verify the inclusion of the required prohibition.

10.0 DBE CONTRACT GOALS

If the project governed by the Agreement includes a DBE contract goal, **SUB-RECIPIENT** understands and agrees that it is required to strictly adhere to the requirements of 49 CFR Part 26 in its efforts to achieve the DBE contract goal.

11.0 SELECTING DBE SUBCONTRACTORS

In order for a firm to be eligible to participate as a DBE subcontractor on the project governed by the Agreement, the DBE subcontractor must be a certified DBE. The firm must be certified and registered as a DBE with the Kansas Department of Transportation or the Kansas Department of Commerce. It is the responsibility of **SUB-RECIPIENT** to ensure that the DBE subcontractor it hires is a certified DBE firm.

12.0 TERMINATING OR SUBSTITUTING A DBE SUBCONTRACTOR

SUB-RECIPIENT cannot terminate and/or substitute a DBE firm that it listed in its proposal as a subcontractor and/or was approved by **WAMPO** as a DBE subcontractor under the Agreement without the prior written consent of **WAMPO**. This includes, but is not limited to, instances where **SUB-RECIPIENT** seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. If **SUB-RECIPIENT** wishes to terminate or substitute a DBE subcontractor it must first submit a written notice to the DBE subcontractor stating its intention to request a termination and/or substitution and the reason for the request, and give the DBE subcontractor no less than five (5) days to respond to the notice and to provide **SUB-RECIPIENT** and **WAMPO** the reasons why the subcontractor should not be terminated. A copy of this written notice must be provided to **WAMPO**. Only after the DBE subcontractor has been so notified and provided time to object, may **SUB-RECIPIENT** submit its request to terminate or substitute a DBE subcontractor. **SUB-RECIPIENT** must submit its request in writing to WAMPO and fully state the reasons for its request. Unless the request demonstrates that **SUB-RECIPIENT** has good cause to terminate and/or substitute a DBE subcontractor, WAMPO will not concur in **SUB-RECIPIENT's** finding of good cause and will not approve **SUB-RECIPIENT's** request to terminate and/or substitute a DBE subcontractor. The definition of "good cause" can be found at 49 CFR Part 26 § 26.53.

[21]

WAMPO – Wichita Transit
New Freedom Project Agreement
October 2013

12.1 When a DBE subcontractor is terminated, fails to complete its work on the Agreement for any reason, **SUB-RECIPIENT** is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE subcontractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was terminated. If there is a DBE contract goal on the project, then the work performed by the substitute DBE need only perform at least the same amount of work under the Agreement as the DBE that was terminated, to the extent needed to meet the DBE contract goal.

13.0 DBE REPORTING REQUIREMENTS

SUB-RECIPIENT is required to submit to **WAMPO**, on a monthly basis, the DBE Participation Form that is attached to the Agreement. **SUB-RECIPIENT** shall also provide any other data relevant to DBE participation on the project upon request by **WAMPO**. **SUB-RECIPIENT** shall also permit **WAMPO** to access its records up to and including accounting records that are pertinent to **WAMPO** substantiating the information provided by **SUB-RECIPIENT** on its DBE reporting forms.

14.0 FLOW DOWN PROVISIONS

The provisions listed in this Attachment apply to every subcontractor hired by **SUB-RECIPIENT** to perform work under the Agreement. **SUB-RECIPIENT** will ensure that all of its subcontractors are made aware of these requirements and will include these provisions as a part to any subcontract that **SUB-RECIPIENT** enters into under the Agreement.

Exhibit F

TITLE VI ASSURANCES

Title VI Standard Terms And Conditions (Sub-Recipients)

1) Civil Rights

a. Non-Discrimination Assurances

i. As required by federal law, **SUB-RECIPIENT** certifies that it will comply with all applicable federal and state statutes relating to nondiscrimination and equal opportunity, including, but not limited to Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d and 2000e).

ii. **SUB-RECIPIENT** shall comply with the administrative rules of the U.S. Department of Transportation (DOT) relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR Subtitle A, Part 21).

iii. **SUB-RECIPIENT** shall not discriminate on grounds of race, color, or national origin of any individual in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. **SUB-RECIPIENT** shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21. 5 including employment practices.

iv. These assurances concerning nondiscrimination also apply to sub-contractors and supplies of **SUB-RECIPIENT**. These apply to all solicitations either by competitive bidding or negotiation made by **SUB-RECIPIENT** for work to be performed under a subcontract including procurement of materials or equipment. Each potential sub-contractor or supplier shall be notified by **SUB-RECIPIENT** of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, or national origin of any individual.

v. **SUB-RECIPIENT** assures that, as a condition of receiving reimbursements under this Agreement, that it will not discriminate on grounds of race, color, or national origin of an individual in the performance of any services under this Agreement, including the selection and retention of sub-contractors and the procurement of materials and leases of equipment.

b. **SUB-RECIPIENT** shall comply with the data collection and reporting requirements subject to Title VI of the Civil Rights Act of 1964 and the implementing regulations of 28 CFR Part 42, Subpart F and 49 CFR Part 21.

c. The terms of this paragraph shall apply to all solicitations either by competitive bidding or negotiation made by **SUB-RECIPIENT** for work to be performed under a subcontract including procurement of materials or equipment, and **SUB-RECIPIENT** shall notify each potential subcontractor, supplier, or lessor of **SUB-RECIPIENT's** obligations under this Agreement.

d. Each of the statutes, regulations, or rules, including any later amendments, listed in this paragraph are incorporated by reference and made a part of this Agreement.

e. **SUB-RECIPIENT** shall include these provisions in every sub-contract, including procurement of materials or leases of equipment.

f. Failure to carry out the requirements set forth in this paragraph shall constitute a breach of contract and may result in termination of this Agreement or other remedy that is deemed appropriate.

EXHIBIT G

5317 Project Operating Budget

SUB-RECIPIENT's Name Wichita Transit

Budget Year - 11/1/13 – 5/1/15

Personnel:

- Driver _____

Fuel _____

Misc. *

Total Operating Cost _____

Project Income

Operating Subtotal \$115,828

Local Match	\$0
-------------	-----

5317 Reimbursement	\$115,828
--------------------	-----------

Total Project Cost	\$115,828
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***If misc. expense is reflected in budget, please identify below.**

EXHIBIT H

WAMPO Info Sheet

Date

Project Number
(completed by WAMPO)

SUB-RECIPIENT's Name

Wichita Transit

SUB-RECIPIENT's
Federal Tax ID Number
(FEIN)

SUB-RECIPIENT's Dun &
Bradstreet Number
(DUNS)

SAM Expiration Date
(System for Award Management)

SAM Number

SUB-RECIPIENT Mailing
Address

Phone Number

Fax Number

Second Reading Ordinances for October 8, 2013 (first read on October 1, 2013)

A. Public Hearing and Adoption of an Amended Redevelopment Project Plan, Tax Increment Financing for the Exchange Place Project. (District VI)

ORDINANCE NO. 49-583

AN ORDINANCE ADOPTING A REDEVELOPMENT PROJECT PLAN FOR THE EXCHANGE PLACE PROJECT AREA LOCATED WITHIN THE CENTER CITY SOUTH REDEVELOPMENT DISTRICT.

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

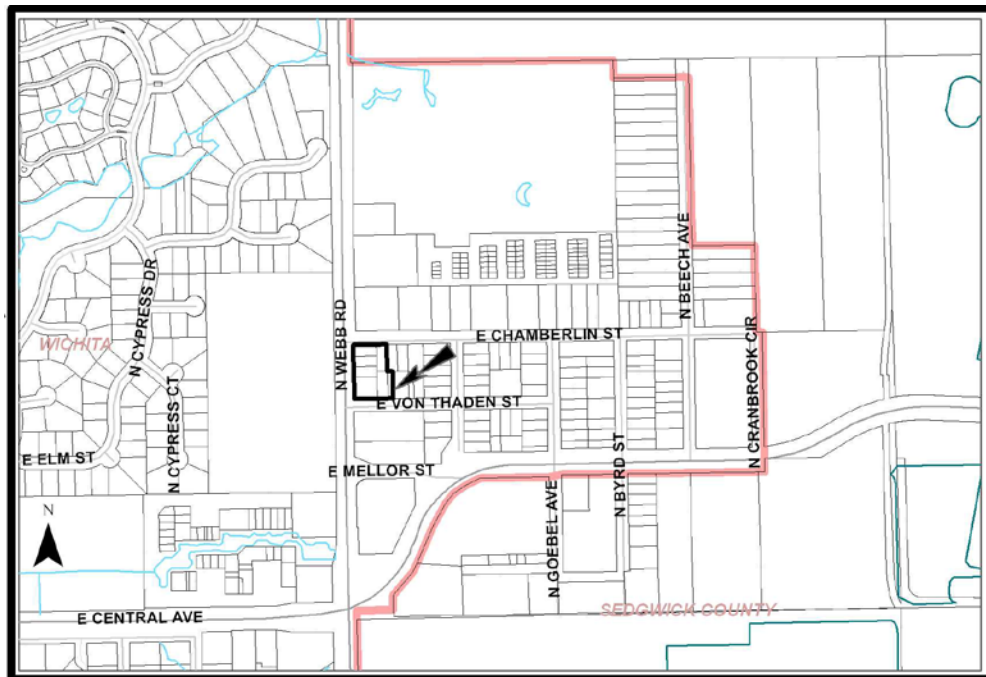
SUBJECT: SUB2013-00017 -- Plat of Travel Air City 2nd Addition located on the east side of Webb Road, north of Central (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)



Background: The site, consisting of one lot on 1.12 acres, is a replat of a portion of the Travel Air City Addition. The property is zoned GC General Commercial.

Analysis: Water and sewer services are available to serve the site. The applicant has submitted a Drive Approach Closure Certificate regarding the driveways required to be closed by access controls, which are being dedicated by the plat. The site is within the noise impact area of McConnell Air Force Base; therefore the applicant has submitted an Avigational Easement and Restrictive Covenant to assure that adequate construction methods will be used to minimize the effects of noise pollution.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Legal Considerations: The Law Department has reviewed and approved the Driveway Closure Certificate, Avigational Easement and Restrictive Covenant as to form and the documents will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat and authorize the necessary signatures.

Attachments: Drive Approach Closure Certificate.
Avigational Easement.
Restrictive Covenant.

COPY

DRIVE APPROACH CLOSURE CERTIFICATE

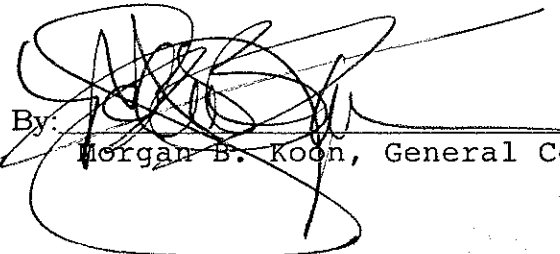
Sedgwick County)
) SS
State of Kansas)

Triple J of Wichita, L.L.C., a Kansas limited liability company, owner(s) of that certain real property to be known as Travel Air City 2nd Addition, Wichita, Sedgwick County, Kansas, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on Webb Road in excess of the one allowed per said platting requirements shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. - bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 18 day of SEPTEMBER, 2013.

Triple J of Wichita, L.L.C.

By: 
Morgan B. Koon, General Counsel

1 of 2

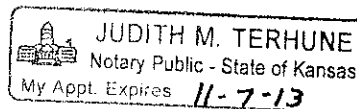
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 18th day of September, 2013,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came Morgan B. Koon as General Counsel of
Triple J of Wichita, L.L.C., a Kansas limited liability company, personally known to me
to be the same person who executed the within instrument of writing and such
persons duly acknowledged the execution of the same on behalf, and as the act and
deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)



Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

AVIGATIONAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, this 18 day of SEPTEMBER, 2013, by Triple J of Wichita, L.L.C., a Kansas limited liability company, GRANTOR hereof, does hereby grant a permanent Avigational Easement to the public authority authorized by Law to own and operate public-owned airports in Sedgwick County, Kansas, for the use of "Navigable Airspace" as defined by the Federal Aviation Act of 1958, over all the following-described real estate, to-wit:

TRAVEL AIR CITY 2ND ADDITION

Lot 1, Block A

By virtue of this easement, the grantor, for and on behalf of himself and all successors in interest to any and all of the real property above-described, waives as to the public authority only any and all claims for damage of any kind whatsoever incurred as a result of aircraft using the "Navigable Airspace" granted herein. This easement does not grant or convey any surface use rights nor is it to be construed to grant any right to private persons or corporations.

"Navigable Airspace" means air space above the minimum altitudes of flight prescribed by regulations issued under the Federal Aviation Act of 1958, Section 101 (24) 49 U.S. Code Sect. 40102, and shall include air space needed to insure aircraft safety during take-off and landing.

To have and to hold said easement forever.

Triple J of Wichita, L.L.C.

By: 

Morgan B. Koon, General Counsel

1 of 2

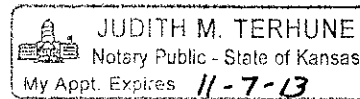
STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this 18th day of September, 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Morgan B. Koon as General Counsel of Triple J of Wichita, L.L.C., a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)



Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

RESTRICTIVE COVENANT

THIS DECLARATION made this 18 day of SEPTEMBER, 2013, by Triple J of Wichita, L.L.C., a Kansas limited liability company, the "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

TRAVEL AIR CITY 2ND ADDITION

Lot 1, Block A

WHEREAS, the Declarant's property is located near McConnell Air Force Base and is accordingly subject to considerable noise from the operation of aircraft which may infringe upon the enjoyment of said property and may affect the health and/or well being of the property's users, and

WHEREAS, the City of Wichita, in connection with approval of the plat of said addition, shall require that proper consideration be given to abate outside noise pollution within buildings constructed on said property.

NOW, THEREFORE, Declarant hereby declares that TRAVEL AIR CITY 2ND ADDITION, Wichita, Sedgwick County, Kansas, shall be and the same is subjected to the following restrictive covenant, to wit:

That any structure constructed on the premises shall be so designed and constructed as to minimize outside noise pollution in compliance with applicable City of Wichita and/or Sedgwick County codes and with due consideration given to the intended use of the structure. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall be binding upon the successors and assigns, jointly and severally, by these presents.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification

shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas

Executed the date and year first above written.

Triple J of Wichita, L.L.C.

By:

Morgan B. Koon, General Counsel

STATE OF KANSAS)
SEDGWICK COUNTY) SS:

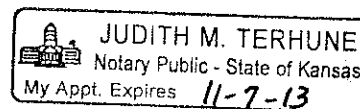
BE IT REMEMBERED, that on this 18th day of September, 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Morgan B. Koon as General Counsel of Triple J of Wichita, L.L.C., a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

Approved as to form:



Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
October 8, 2013

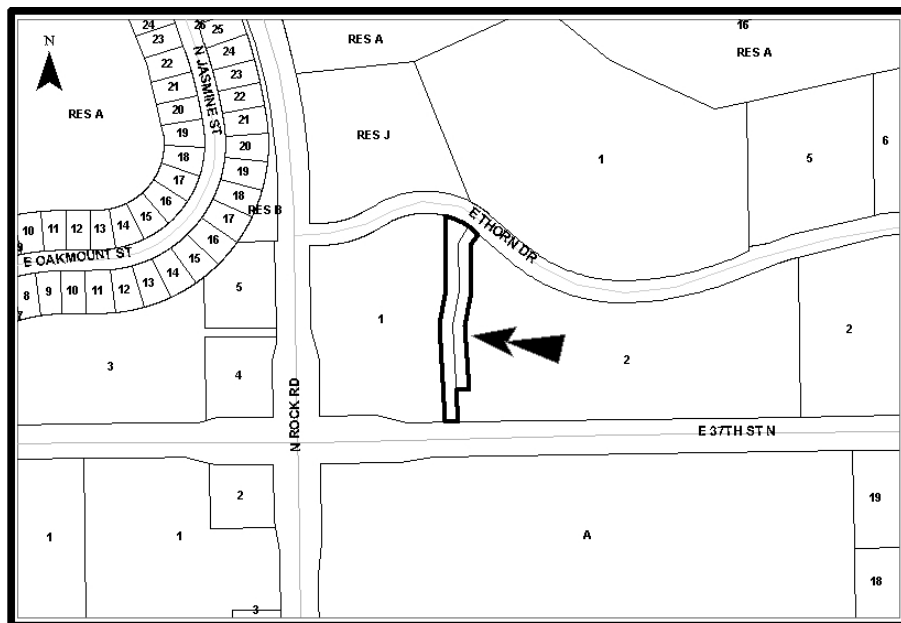
TO: Mayor and City Council

SUBJECT: DED2013-00026 Dedication of Drainage Easement located on the northeast corner of 37th Street North and Rock Road (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.



Background: The Dedication is associated with Lot Split Case No. SUB2013-00018 (Rent-a-Center Addition) and was requested by the City of Wichita's Stormwater Engineer. The lot split has created two lots from one platted lot.

Analysis: The Dedication DED2013-00026 is for an 80-foot drainage easement located along the east property line of both lots.

Financial Considerations: There are no financial considerations associated with the Dedication.

Legal Considerations: The Law Department has approved the Dedication as to form and the document will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

Attachment: Dedication of Drainage Easement.

COPY

DRAINAGE EASEMENT

THIS EASEMENT made this 27 day of AUGUST, 2013, by, Premier Investment Company, LLC, a Delaware limited liability company, of the first part and the City of Wichita, Kansas, of the second part.

WITNESSED, That the said first part, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the second party a perpetual right-of-way and easement for the purposes of accessing, constructing, maintaining, and repairing all of their drainage systems, along over and under the following described real estate situated in Wichita, Sedgwick County, Kansas, to wit:

A tract of land lying within a portion of Lots 1 and 2, Block 1, Rent-A-Center, an addition to Wichita, Sedgwick County, Kansas, said tract being coincident with a platted utility easement and being more particularly described as follows:

BEGINNING at the southeast corner of Lot 1, Block 1, said Rent-A-Center, thence along the southerly line of said addition S89°07'15"W, 40.03 feet; thence parallel with and 40.00 feet west of the common lines of said Lots 1 and 2 for the next three courses, N03°05'59"W, 308.08 feet; thence N10°07'15"E, 110.83 feet; thence N00°44'15"W, 231.32 feet to a point on the north line of said Lot 1, said point being on a non-tangent curve to the right, said curve having a radius of 240.00 feet, a central angle of 25°6'29", a chord bearing of S62°17'30"E, and a chord distance of 104.33 feet; thence along the arc of said curve and along the northerly lines of said Lots 1 and 2, a distance of 79.47 feet; thence continuing along the northerly line of said Lot 2, S49°44'15"E, 14.67 feet; thence parallel with and 40.00 feet east of the common lines of said Lots 1 and 2 for the next four courses, S30°49'53"W, 43.56 feet; thence S00°44'15"E, 142.49 feet; thence S10°07'15"W, 109.17 feet; thence S03°05'59"E, 201.84 feet to a point on the north line of a platted 100 foot drainage easement; thence along said north line, S89°07'15"W, 40.03 feet to the said common line; thence along said common line S03°05'59"E, 100.07 to the POINT OF BEGINNING.



MKEC

ENGINEERING SUCCESS

DED 2013-26
LSP 2013-18

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing all of their drainage systems.

IN WITNESS WHEREOF: The party of the first has signed these presents the day and year first written.


PREMIER INVESTMENT COMPANY, LLC
a Delaware limited liability company

 manager
Gregory J. Hoff, manager

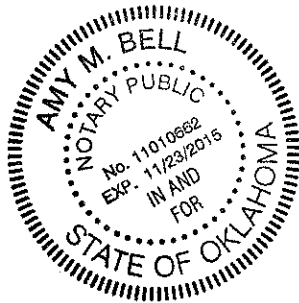
Tulsa COUNTY) SS
STATE OF OKLAHOMA)

This instrument was acknowledged before me on this 27th day of August, 2013, by
Gregory J. Hoff, manager, Premier Investment Company, LLC, a Delaware limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last
above written.

 Notary Public
Notary Public:

My Term Expires: 11/23/2015



Approved as to form:

Gary E. Rebenstorf, Director of Law



MKEC

ENGINEERING SUCCESS

Upon Recording mail to:
MKEC Engineering Consultants, Inc.
411 N. Webb Rd.
Wichita, KS 67206

J:\Projects\2013\1301020378_QuikTrip 388_37th & Rock\11-Project Management\Development\Document\Drainage Easement si-COW Drng.doc

DED2013 26 (LSP2013 18)
DRAINAGE EASEMENT
Page 2 of 2

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

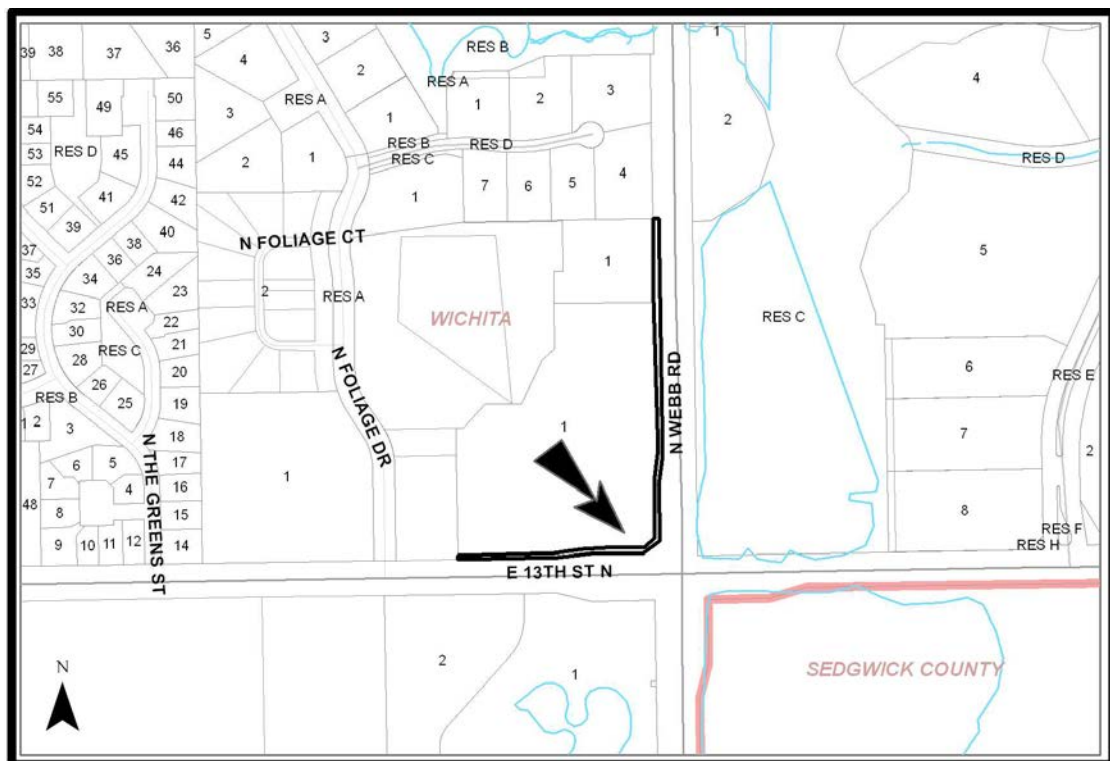
SUBJECT: VAC2013-00008 - Request to vacate a portion of platted complete access control on property generally located on the northwest corner of 13th Street North and Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request (8-0).



Background: Currently Lot 1, Block 1, Foliage Center Addition (south site) is permitted two (2) full movement drives onto Webb Road and one (1) full movement drive onto 13th Street North. Currently Lot 1, Block 1, Foliage Center 2nd Addition (north site) is permitted one (1) full movement drive on the north 60 feet of its 232.49 feet of Webb Road frontage. The applicant proposes to shift the south permitted drive on Lot 1, Block 1, Foliage Center Addition 30-40 feet north and close the north permitted drive. The applicant proposes to basically flip this north permitted drive from Lot 1, Block 1, Foliage Center Addition to the south end of Lot 1, Block 1, Foliage Center 2nd Addition. The applicant proposes to open up a second drive on the west end of Lot 1, Block 1, Foliage Center Addition's 13th Street frontage. The Foliage Center Addition was recorded with the Register of Deeds January 26, 2009. The Foliage Center 2nd Addition was recorded with the Register of Deeds April 9, 2008.

Analysis: The Metropolitan Area Planning Commission (MAPC) voted (8-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order and two (2) dedications of access control by separate instruments. A certified copy of the Vacation Order and two (2) dedications of access control by separate instruments will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- Two (2) dedications of access control by separate instruments

ACCESS CONTROL DEDICATION

WHEREAS, Beech Lake Investment, LLC, a Kansas limited liability company, as owner of the below described property, has petitioned the City of Wichita to vacate the platted access controls for the same per Vacation Case numbered VAC2013-00008; and

WHEREAS, It is necessary to re-dedicate access controls for the below described property; and

WHEREAS, Beech Lake Investment, LLC, a Kansas limited liability company wishes to do the same; and

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, being the owners of the following described real estate, to-wit:

Lot 1, Block 1, Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas.

Do hereby transfer and convey to the City of Wichita all abutters' right of access, ingress and egress to said property from or to North Webb Road and East 13th Street over and across the east and south lines respectively of the above described property; provided however, the following three full movement openings shall be allowed:

- One full movement opening along 100.00 foot of Webb Road frontage; Beginning at a point 207.00 feet south of the northeast corner of Lot 1, Block 1, Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas, thence south 100.00 feet along the east line of said addition.
- One full movement opening along 50.00 foot of 13th Street frontage; Beginning at the southwest corner of Lot 1, Block 1, Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas, thence east 50.00 feet along the south line of said addition.
- One full movement opening along 100.00 foot of 13th Street frontage; Beginning at a point 155.00 feet east of the southwest corner of Lot 1, Block 1, Foliage Center Addition , an addition to Wichita, Sedgwick County, Kansas, thence east 100.00 feet along the south line of said addition.

It is understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Webb Road and 13th Street except for the described aforementioned three full movement openings to Webb Road and 13th Street thereto.

Executed this 2nd day of August, 2013.

BEECH LAKE INVESTMENT, LLC, a Kansas limited liability company

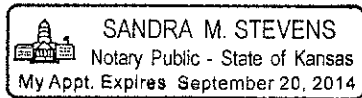
By:

Johnny Stevens
Johnny Stevens, Manager

SEDGWICK COUNTY) SS
STATE OF KANSAS)

Be it remembered that on this 2nd day of August, 2013, before me a Notary Public in and for said State and County, came Johnny Stevens, Manager, Beech Lake Investment, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL)



Notary Public

S M Stevens

My Appointment Expires: 9-20-2014

ACCESS CONTROL DEDICATION

WHEREAS, Beech Lake Investment, LLC, a Kansas limited liability company, as owner of the below described property, has petitioned the City of Wichita to vacate the platted access controls for the same per Vacation Case numbered VAC2013-00008; and

WHEREAS, It is necessary to re-dedicate access controls for the below described property; and

WHEREAS, Beech Lake Investment, LLC, a Kansas limited liability company wishes to do the same; and

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, being the owners of the following described real estate, to-wit:

Lot 1, Block 1, Foliage Center Second Addition, an addition to Wichita, Sedgwick County, Kansas,
TOGETHER WITH;

A portion of Lot 1, Block 1, Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas.

Do hereby transfer and convey to the City of Wichita all abutters' right of access, ingress and egress to said property from or to North Webb Road over and across the east line of the above described property; provided however, the following two full movement openings shall be allowed:

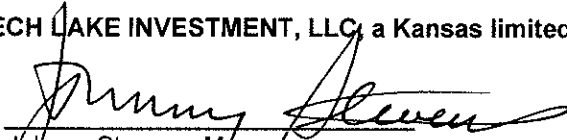
- One full movement opening along 50.00 foot of Webb Road frontage; Beginning at the northeast corner of Lot 1, Block 1, Foliage Center Second Addition, an addition to Wichita, Sedgwick County, Kansas, thence south 50.00 feet along the east line of said addition.
- One full movement opening along 100.00 foot of Webb Road frontage; Beginning at a point 75.00 feet north of the southeast corner of Lot 1, Block 1, Foliage Center Second Addition, an addition to Wichita, Sedgwick County, Kansas, thence south 100.00 feet along the east lines of said Foliage Center Second Addition and Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas, to a point 25.00 feet south of the northeast corner of Lot 1, Block 1, of said Foliage Center Addition.

It is understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Webb Road except for the described aforementioned two full movement openings to Webb Road thereto.

Executed this 2nd day of August, 2013.

BEECH LAKE INVESTMENT, LLC, a Kansas limited liability company

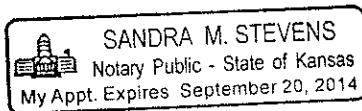
By:


Johnny Stevens, Manager

SEDGWICK COUNTY) SS
STATE OF KANSAS)

Be it remembered that on this 2nd day of August, 2013, before me a Notary Public in and for said State and County, came Johnny Stevens, Manager, Beech Lake Investment, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.

(SEAL)



Notary Public:



My Appointment Expires:

9-20-2014

**BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**IN THE MATTER OF THE VACATION OF PORTIONS)
OF PLATTED ACCESS CONTROL)**

**GENERALLY LOCATED ON THE NORTHWEST)
CORNER OF 13TH STREET NORTH & WEBB ROAD)**

VAC2013-00008

MORE FULLY DESCRIBED BELOW)

VACATION ORDER

NOW on this 1ST day of October, 2013, comes on for hearing the petition for vacation filed by Beech Lake Investment, LLC, c/o Johnny Stevens (owner), praying for the vacation of the following described portions of platted access control, to-wit:

All access openings platted along the frontage of North Webb Road and East 13th Street abutting and adjoining Lot 1, Block 1, Foliage Center Addition, an addition to Wichita, Sedgwick County, Kansas,

TOGETHER WITH;

All access openings platted along the frontage of North Webb Road abutting and adjoining Lot 1, Block 1, Foliage Center Second Addition, an addition to Wichita, Sedgwick County, Kansas.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law,

in The Wichita Eagle on March 28, 2013, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the above-described portions of platted access control and the public will suffer no loss or inconvenience thereby.

3. Two (2) dedications of access control by separate instruments will be recorded with this Vacation Order at the Register of Deeds.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

6. The vacation of the described portions of platted access control should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 1st day of October, 2013, ordered that the above-described portions of platted access control are hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

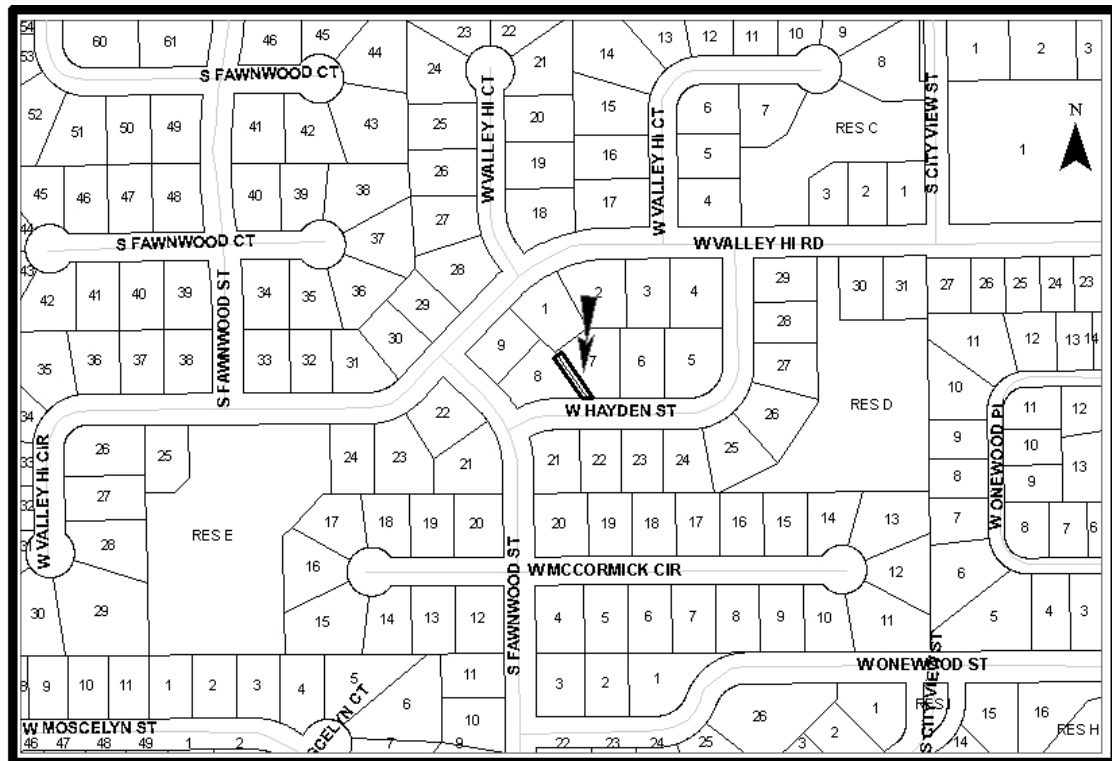
SUBJECT: VAC2013-00020 - Request to vacate a portion of a platted utility and drainage easement, on property generally located east of 151st Street West, south of Maple Street, on the northeast corner of Fawnwood and Hayden Streets (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request (9-0).



Background: The applicant is requesting consideration to vacate the 20-foot wide platted drainage and utility easement located on the common lot line of Lots 7 and 8, Block F, Auburn Hills 16th Addition. There are no utilities located within the subject easement. The Auburn Hills 16th Addition was recorded with the Sedgwick County Register of Deeds February 3, 2006.

Analysis: The MAPC voted (9-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachment: None.

**BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**IN THE MATTER OF THE VACATION OF A
PLATTED DRAINAGE AND UTILITY EASEMENT**

**GENERALLY LOCATED EAST OF 151ST STREET WEST,
SOUTH OF MAPLE STREET, ON THE NORTHEAST
CORNER OF FAWNWOOD AND HAYDEN STREETS**

VAC2013-00020

MORE FULLY DESCRIBED BELOW

VACATION ORDER

NOW on this 8TH day of October, 2013, comes on for hearing the petition for vacation filed by West Wichita Development, Inc., c/o Jay W. Russell (owner), praying for the vacation of the following described platted drainage and utility easement, to-wit:

That part of the 20 foot drainage and utility easement granted in Auburn Hills 16th Addition, Wichita, Sedgwick County, Kansas described as follows: Beginning at the front corner common to Lots 7 and 8, Block F, in said Auburn Hills 16th Addition; thence N89°28'51"W along the south line of said Lot 8, 12.18 feet to the intersection with the southwest line of said 20 foot drainage and utility easement; thence N34°19'10"W along the southwest line of said 20 foot drainage and utility easement, 99.37 feet to a point 10.00 feet normally distant southeasterly of the southwesterly extension of the northwest line of said Lot 7; thence N55°07'28"E parallel with the extended northwest line of said Lot 7, 20.00 feet to the intersection with the northeast line of said 20 foot drainage and utility easement; thence S34°19'10"E along the northeast line of said 20 foot drainage and utility easement, 113.49 feet to the intersection with the south line of said Lot 7; thence N89°28'51"W along the south line of said Lot 7, 12.18 feet to the point of beginning.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on June 20, 2013, which was at least 20 days prior to the public hearing.
2. No private rights will be injured or endangered by the vacation of the above-described platted drainage and utility easement and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
4. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.
5. The vacation of the described platted drainage easement should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 8th day of October, 2013, ordered that the above-described platted drainage and utility is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

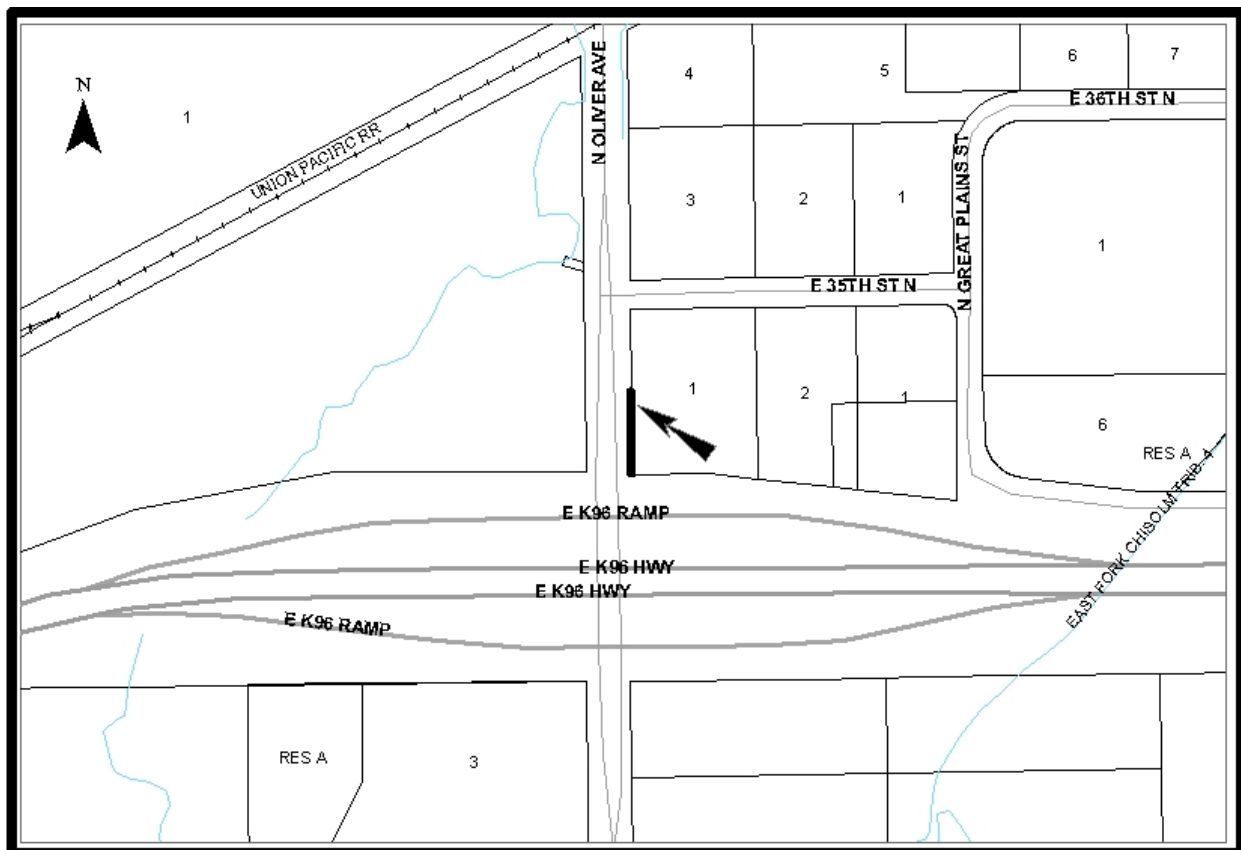
SUBJECT: VAC2013-00024 - Request to vacate a portion of platted complete access control on property generally located north of K-96 Highway on the east side of Oliver Avenue. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request (10-0).



Background: The applicant proposes an additional drive onto Oliver Avenue from the subject site's south 200 feet; Lot 1, Great Plains Business Park 2nd Addition. Currently there is one permitted drive from the site onto Oliver Avenue, located in the site's north 195.76 feet; the site has 395.76 feet of Oliver frontage. The site also has access onto 35th Street North on its north side. The site has no access onto the abutting south K-96 Highway right-of-way. The K-96 Highway frontage road runs parallel to the site, directing access onto and off of Oliver Avenue approximately 1,000 feet from its intersection with Oliver Avenue. A long, irregular shaped, unplatted, undeveloped SF-5 zoned tract is located west of the site, across Oliver Avenue. The unplatted tract's only access is Oliver Avenue. Access onto the unplatted tract will be determined at the time of platting; as such there currently are no conflicting drives located across Oliver Avenue. Oliver Avenue is a four-lane arterial with a raised median at this location; the raised median will also prevent conflicting drives with the unplatted SF-5 zoned site located west of the site across Oliver Avenue. The raised median will also ensure that the subject site's proposed drive is right-in - right-out. There is public sewer located along the site's Oliver right-of-way. There are no other utilities located in the area of the vacation request. The Great Plains Business Park 2nd Addition was recorded with the Register of Deeds March 31, 1992.

Analysis: The Metropolitan Area Planning Commission (MAPC) voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order and a dedication of access control by separate instrument. A certified copy of the Vacation Order and a dedication of access control by separate instrument will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- A dedication of access control by separate instrument

**BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**IN THE MATTER OF THE VACATION OF A PORTION)
OF PLATTED ACCESS CONTROL)**

**GENERALLY LOCATED NORTH OF K-96 HIGHWAY)
ON THE EAST SIDE OF OLIVER AVENUE)**

VAC2013-00024

MORE FULLY DESCRIBED BELOW

VACATION ORDER

NOW on this 1ST day of October, 2013, comes on for hearing the petition for vacation filed by Great Plains Ventures, Inc., c/o Marque C. Peer (owner), praying for the vacation of the following described portion of platted access control, to-wit:

All access controls platted along the south 200.00 feet frontage of Oliver Avenue abutting and adjoining Lot 1, Block 3, Great Plains Business Park 2nd Addition to Wichita, Kansas.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on July 18, 2013, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the above-described portion of platted access control and the public will suffer no loss or

inconvenience thereby.

3. A dedication of access control by separate instruments will be recorded with this Vacation Order at the Register of Deeds.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

6. The vacation of the described portion of platted access control should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 1st day of October, 2013, ordered that the above-described portion of platted access control is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law

ACCESS CONTROL DEDICATION

WHEREAS, GREAT PLAINS VENTURES, INC., as owner of the below described property, has petitioned the City of Wichita to vacate the platted access controls for the same per Vacation Case numbered VAC2013-00024; and

WHEREAS, It is necessary to re-dedicate access controls for the below described property; and

WHEREAS, GREAT PLAINS VENTURES, INC. wishes to do the same; and

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, being the owner of the following described real estate, to-wit:

Lot 1, Block 3, Great Plains Business Park 2nd Addition to Wichita, Kansas.

Do hereby transfer and convey to the City of Wichita all abutters' right of access, ingress and egress to said property from or to Oliver Avenue over and across the west line of the above described property; provided however, the following one right-in/right-out opening shall be allowed:

One 80.00 foot right-in/right-out opening along Oliver Avenue frontage; centered on a point along the west line of the above described lot, said point being 135.00 feet north of the southwest corner of said lot.

It is understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Oliver Avenue except for the described aforementioned one right-in/right-out opening to Oliver Avenue thereto.

Executed this 3rd day of SEPTEMBER, 2013.

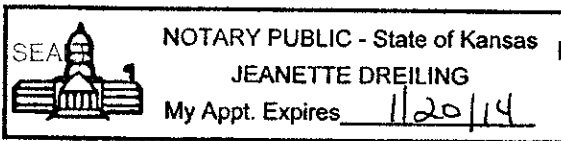
GREAT PLAINS VENTURES, INC.

By: 

Marque C. Peer, Vice President

SEDGWICK COUNTY) SS
STATE OF KANSAS)

Be it remembered that on this 3rd day of September, 2013, before me a Notary Public in and for said State and County, came Marque C. Peer, Vice President, Great Plains Ventures, Inc., who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.



Notary Public: Jeanette Dreiling

My Appointment Expires: 1/20/14

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

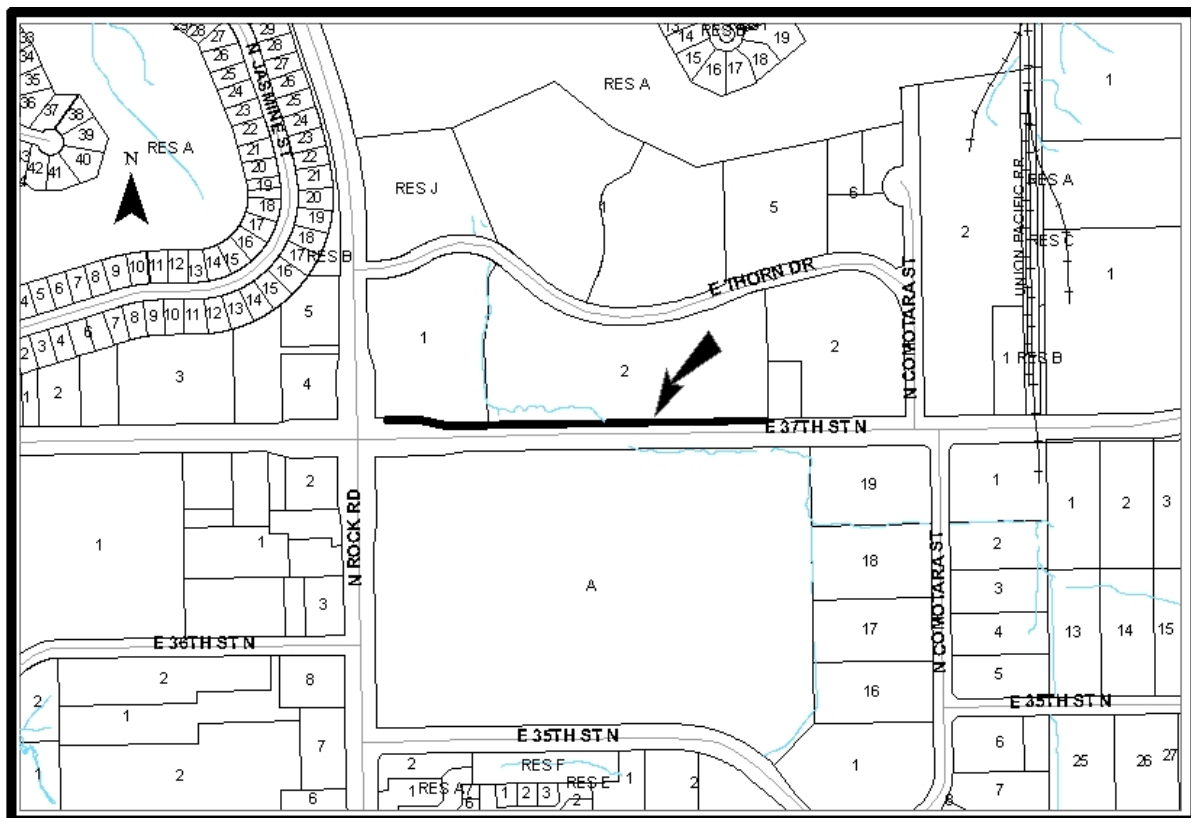
SUBJECT: VAC2013-00025 - Request to vacate a portion of platted complete access control on property generally located north of 37th Street North on the east side of Rock Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request (10-0).



Background: The applicant proposes to change the right-in – right-out 40-foot wide drive located on the east side of Lot 1, Block 2, Rent-A-Center Addition into an 80-foot wide full movement drive. Lot 1 currently has two permitted/platted drives onto 37th Street North; Lot 1 has 438.08 feet of 37th Street frontage. The applicant also proposes four drives along Lot 2’s 1,237 feet of 37th Street North frontage. Lot 2 currently has no permitted/platted drives onto 37th Street North. 37th Street North is a four-lane arterial at this location. There is public water, hydrants and stormwater equipment located along the site’s 37th Street North frontage. The Rent-A-Center Addition was recorded with the Register of Deeds December 2, 1986. A Commercial Lot Split, LSP2013-00018, associated with the case has been approved.

Analysis: The Metropolitan Area Planning Commission (MAPC) voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC’s advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant’s expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order and a dedication of access control by separate instrument. A certified copy of the Vacation Order and a dedication of access control by separate instrument will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- A dedication of access control by separate instrument

ACCESS CONTROL DEDICATION

WHEREAS, PREMIER INVESTMENT COMPANY, LLC, a Delaware limited liability company, as owner of the below described property, has petitioned the City of Wichita to vacate the platted access controls for the same per Vacation Case numbered VAC2013-00025; and also rededicate per agreed upon locations for adjoining Rock Road more particularly than as shown on the recorded final plat of Rent-A-Center; and

WHEREAS, It is necessary to re-dedicate access controls for the below described property; and

WHEREAS, PREMIER INVESTMENT COMPANY, LLC, a Delaware limited liability company wishes to do the same; and

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, being the owners of the following described real estate, to-wit:

Lots 1 and 2, Block 1, Rent-A-Center, an addition to Wichita, Sedgwick County, Kansas.

Do hereby transfer and convey to the City of Wichita all abutters' right of access, ingress and egress to said property from or to 37th Street North and Rock Road over and across the south and west lines respectively of the above described property; provided however, the following access openings shall be allowed:

Per VAC2013-00025 along 37th Street

- One 50.00 foot full movement opening along 37th Street North frontage, centered on a point along the south line of the above described tract, said point being 25.00 feet west of the southeast corner of said Lot 2, Block 1.
- Four openings per Wichita Access Management Guidelines lying along 1027.31 foot of 37th Street North frontage; Beginning 50.00 feet west of the southeast corner of said Lot 2, Block 1, thence 1027.31 feet west along the south line of said Lot to the southwest corner of said Lot 2. Said four access openings shall be placed accordingly: The minimum distance between full turning movement drives shall be 400 feet. The minimum distance between a right-in/right-out drive and either another right-in/right-out drive or a full movement drive shall be 200 feet. The drives being measured from the center drive to center of drive.
- One 80.00 foot full movement opening along 37th Street North frontage, centered on a point along the south line of the above described tract, said point being 40.00 feet west of the southwest corner of said Lot 1, Block 1.

Per agreed upon access points along Rock Road.

- One 60.00 foot right-in/right-out opening along Rock Road frontage, centered on a point along the west line of the above described tract, said point being 87.50 feet north of the southwest corner of said Lot 1, Block 1.
- One 80.00 foot full movement opening along Rock Road frontage, centered on a point along the west line of the above described tract, said point being 267.83 feet northerly of the southwest corner of said Lot 1, Block 1. Said point being more particularly as follows; Commencing at the southwest corner of said Lot 1, Block 1; thence north along said west line, 175.00 feet; thence northwesterly along said west line, 92.83 feet to said point.
- One 80.00 foot full movement opening along Rock Road frontage, centered on a point along the west line of the above described tract, said point being 116.00 feet south of the northwest corner of said Lot 1, Block 1.

It is understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from 37th Street North and Rock Road except for the described aforementioned six openings to 37th Street North and two openings to Rock Road thereto.

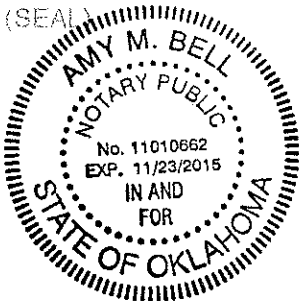
Executed this 27 day of August, 2013.

PREMIER INVESTMENT COMPANY, LLC, a Delaware limited liability company

By: 
Gregory J. Hoff, Manager

Tulsa COUNTY) SS
STATE OF OKLAHOMA)

Be it remembered that on this 27th day of August, 2013, before me a Notary Public in and for said State and County, came Gregory J. Hoff, Manager, Premier Investment Company, LLC, a Delaware limited liability company, who is personally known to me to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year above written.



Notary Public: 

My Appointment Expires: 11/23/2015

**BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**IN THE MATTER OF THE VACATION OF A PORTION)
OF PLATTED ACCESS CONTROL)**

**GENERALLY LOCATED NORTH OF 37TH STREET)
NORTH ON THE EAST SIDE OF ROCK ROAD)**

VAC2013-00025

MORE FULLY DESCRIBED BELOW)

VACATION ORDER

NOW on this 1ST day of October, 2013, comes on for hearing the petition for vacation filed by Premier Investment Company, LLC, c/o Gregory J Hoff (owner), praying for the vacation of the following described portion of platted access control, to-wit:

All access controls platted along the frontage of 37th Street North abutting and adjoining Lots 1 and 2 Block 1, Rent-A-Center, an addition to Wichita, Sedgwick County, Kansas; EXCEPT for the west 40.00 feet thereof.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on July 18, 2013, which was at least 20 days prior to the public hearing.

2. No private rights will be injured or endangered by the vacation of the above-described portion of platted access control and the public will suffer no loss or inconvenience thereby.

3. A dedication of access control by separate instruments will be recorded with this Vacation Order at the Register of Deeds.

4. In justice to the petitioner(s), the prayer of the petition ought to be granted.

5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

6. The vacation of the described portion of platted access control should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 1st day of October, 2013, ordered that the above-described portion of platted access control is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law

City of Wichita
City Council Meeting
October 8, 2013

TO: Mayor and City Council

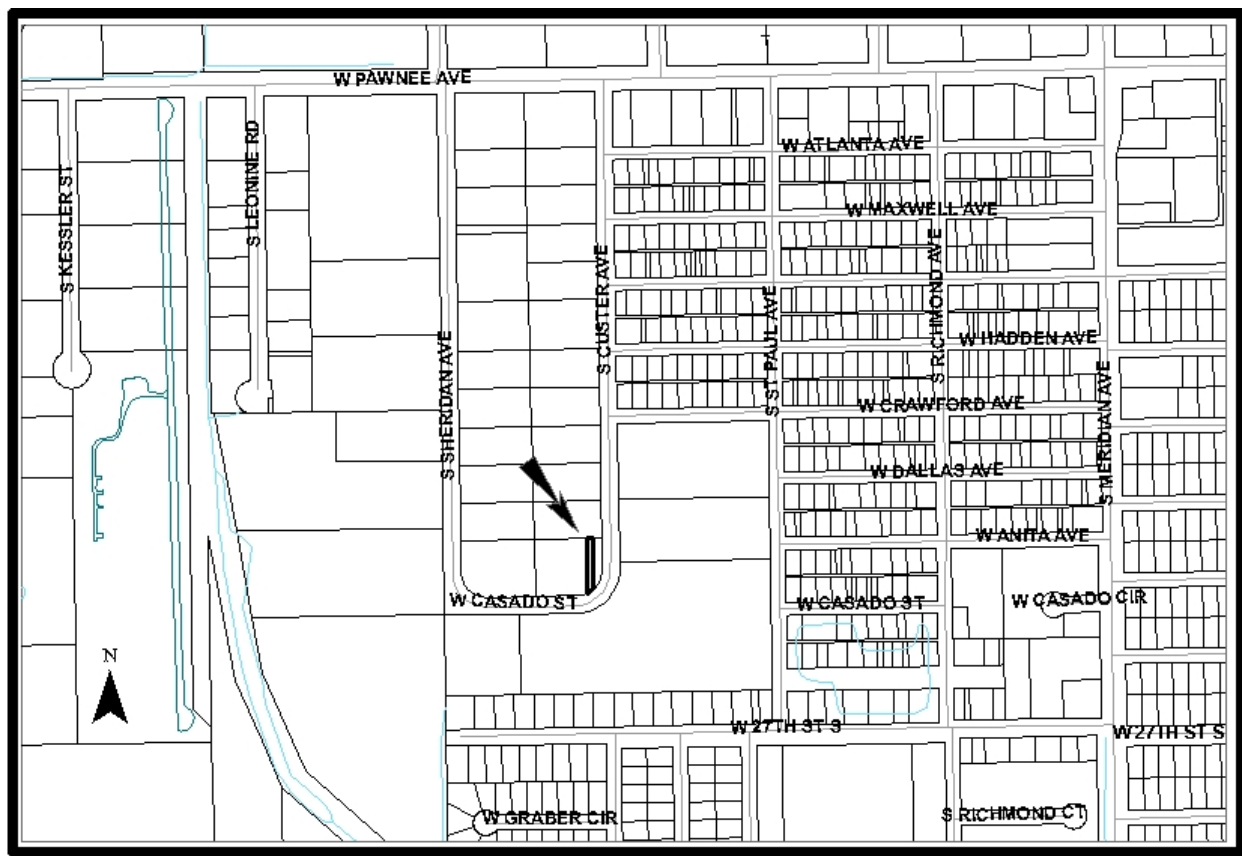
SUBJECT: VAC2013-00028 - Request to vacate a portion of a platted front yard setback on property generally located west of Meridian Avenue, south Pawnee Avenue, on the northeast side of Custer Avenue and Casado Street (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommends approval of the vacation request (8-0).



Background: The applicant proposes to vacate the west 25 feet of the platted 60-foot front yard setback, on Lot 13, Block 1, Wichita Builders 3rd Addition. The subject corner lot is zoned LI Limited Industrial (LI). The Unified Zoning Code's (UZC) minimum front yard setback standard for the LI zoning district is 20 feet. If approved the result would be a 35-foot front yard setback. There are no platted easements or utilities located within the described portion of the platted setback. The Wichita Builders 3rd Addition was recorded with the Register of Deeds January 9, 1973.

Analysis: The MAPC voted (8-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Legal Considerations: The Law Department has reviewed and approved, as to form, the Vacation Order. A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachment: None.

**BEFORE THE CITY COUNCIL OF THE
CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**IN THE MATTER OF THE VACATION OF A PORTION)
OF A PLATTED SETBACK)**

**GENERALLY LOCATED WEST OF MERIDAN AVENUE,)
SOUTH OF PAWNEE AVENUE, ON THE NORTHEAST)
SIDE OF CUSTER AVENUE AND CASADO STREET)**

VAC2013-00028

MORE FULLY DESCRIBED BELOW

VACATION ORDER

NOW on this 8TH day of October, 2013, comes on for hearing the petition for vacation filed by Center Industries Corp., (owner) c/o K.E. Miller Engineering, P.A., (agent), praying for the vacation of the following described portion of a platted setback, to-wit:

The west 25 feet of the east 60 feet of Lot 13, Block 1, Wichita Builders 3rd Addition, Wichita, Sedgwick County, Kansas.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on August 1, 2013, which was at least 20 days prior to the public hearing.
2. No private rights will be injured or endangered by the vacation of the above-described portion of the platted setback and the public will suffer no loss or inconvenience

thereby.

3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

4. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.

5. The vacation of the described portion of the platted setback should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 8th day of October, 2013, ordered that the above-described portion of the platted setback is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall certify a copy of this order to the Register of Deeds of Sedgwick County.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary Rebenstorf, Director of Law